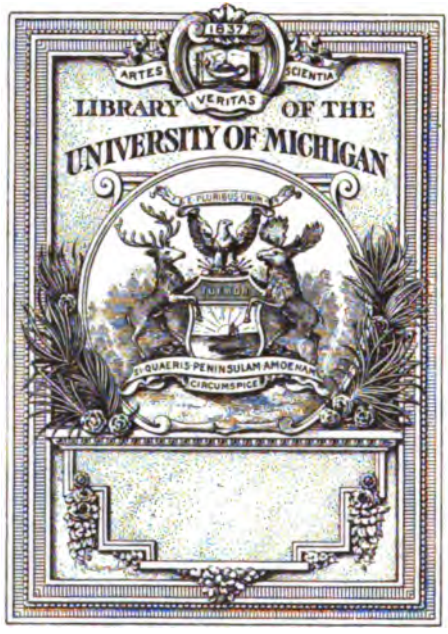

ANNUAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN

FOR THE

FISCAL YEAR ENDING JUNE 30, A. D. 1909

JOHN E. BIRD
ATTORNEY GENERAL

BY AUTHORITY

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1910

ATTORNEYS GENERAL OF THE STATE OF MICHIGAN SINCE 1836.

APPOINTED.

DANIEL LE ROY	July 18, 1836–1837
PETER MOREY	March 21, 1837–1841
ZEPHANIAH PLATT	March 4, 1841–1843
ELON FARNSWORTH	March 9, 1843–1845
HENRY N. WALKER	March 24, 1845–1847
EDWARD MUNDY	March 12, 1847–1848
GEORGE V. N. LOTHROP	April 3, 1848–1850

ELECTED.

WILLIAM HALE	1851–1854
JACOB M. HOWARD	1855–1860
CHARLES UPSON	1861–1864
ALBERT WILLIAMS	1865–1866
WILLIAM L. STOUGHTON	1867–1868
DWIGHT MAY	1869–1872
BYRON D. HALL (a)	1873–1874
ISAAC MARSTON	April 1, 1874–1874
ANDREW J. SMITH	1875–1876
OTTO KIRCHNER	1877–1880
JACOB VAN RIPER	1881–1884
MOSES TAGGART	1885–1888
STEPHEN V. R. TROWBRIDGE (b)	1889–1890
BENJAMIN W. HUSTON	March 25, 1890–1890
ADOLPHUS A. ELLIS	1891–1894
FRED A MAYNARD	1895–1898
HORACE M. OREN	1899–1902
CHARLES A. BLAIR	1903–1904
JOHN E. BIRD	1905–1909

(a) Resigned April 1, 1874. Isaac Marston appointed to fill vacancy.
(b) Resigned March 25, 1890. Benjamin W. Huston appointed to fill vacancy.

ATTORNEY GENERAL'S OFFICE.

JOHN E. BIRD, Attorney General.
HENRY E. CHASE, Deputy Attorney General.

ASSISTANTS.

CHARLES W. McGILL.
GEORGE S. LAW.
THOMAS AMBROSE LAWLER.*
ARTHUR P. HICKS.
J. SHURLEY KENNARY.

CLERKS.

FRED H. HADRICH.
HENRY G. CASSEY.

STENOGRAPHERS.

DWIGHT B. HINCKLEY.
ELLA E. BUCKNELL.

*Chief Law Clerk.

ANNUAL REPORT, 1909.

STATE OF MICHIGAN,
Attorney General's Office,
Lansing, July 1, 1909.

To the Legislature of the State of Michigan:

In compliance with the law, I have the honor herewith to present the annual report of the business of this department for the fiscal year ending June 30, 1909, including official opinions and an abstract of the official reports of the prosecuting attorneys of the counties of the State, showing the number of prosecutions, convictions, acquittals, etc.

Four indexes are included: a "Table of Cases" an "Index of Names of Opinions," "Subjects of Opinions," and "General Index to Report."

The various matters contained in this report are arranged as Schedules "A" to "S," inclusive and classified as follows:—

SCHEDULE A.—Statement of criminal and habeas corpus cases and certiorari to review habeas corpus cases.

SCHEDULE B.—Statement of mandamus cases and a prohibition case.

SCHEDULE C.—Statement of quo warranto cases and certiorari to review quo warranto cases.

SCHEDULE D.—Statement of chancery cases in state courts and cases in equity in United States courts.

SCHEDULE E.—Statement of proceedings for the collection of escheated estates.

SCHEDULE F.—Statement of inheritance tax proceedings:

1st. Inheritance tax cases disposed of.

2d. Inheritance taxes determined *but not* paid or only *partially* paid also showing cases where Lis pendens has been filed to secure payment of tax and amounts of tax *now* due.

3d. Inheritance tax cases pending.

SCHEDULE G.—Statement of insane cases, containing: (a) statement of money collected and paid to the state, through efforts of attorney general, with the co-operation of medical superintendents of various asylums and judges of probate as reimbursement to the state for the

support of certain insane persons at state asylums, (b) statement of proceedings for reimbursement, (c) statement of proceedings for deportation and importation of insane persons.

SCHEDULE H.—Statement of assumpsit cases, disbarment proceedings, ejectment, replevin and miscellaneous cases.

SCHEDULE I.—Statement of amounts received as costs of suits, etc.

SCHEDULE J.—List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved, and a statement of the amount of money received as approval fees and paid to state treasurer.

SCHEDULE K.—Summary-statement from Schedules D. E. G. H. I. J. amounts collected and paid to the state through this department, also including the sum received as fees for approving articles of association, etc., of insurance companies, for the fiscal year ending June 30, 1909.

SCHEDULE L.—Official opinions of the attorney general.

SCHEDULE M.—Abstract of the semi-annual reports of the prosecuting attorneys of the official business of the various counties, for the fiscal year ending June 30, 1909, and

SCHEDULE N.—Recapitulation of the semi-annual reports of the prosecuting attorneys of the official business of their respective counties, during the fiscal year ending June 30, 1909.

SCHEDULE O.—List of prosecuting attorneys, by counties, with name of county seat and address of prosecutor.

SCHEDULE P.—Table of cases.

SCHEDULE Q.—Index of names of opinions.

SCHEDULE R.—Index to Subjects of opinions.

SCHEDULE S.—General index to report.

Respectfully submitted,

JNO. E. BIRD,

Attorney General.

FHHh.

SCHEDULE "A."

Statement of criminal and habeas corpus cases and certiorari to review habeas corpus cases.

CRIMINAL CASES DISPOSED OF.

SUPREME COURT.

People v. Frank A. Lamb and Floyd E. Winter. Exceptions from Montcalm. Conspiracy to defraud. Submitted Nov. 15, 1907; re-argued (by order of the court) June 2, 1908. Affirmed, July 13, 1908. Motion for rehearing submitted, Sept. 8 and denied Sept. 10, 1908. 117 N. W. 539; 153 Mich. 675.

People v. Charles Owen. Error to recorder's court of Detroit. Assault with intent to commit murder. Submitted, June 12. Affirmed, Nov. 30, 1908. 118 N. W. 590; 154 Mich. 571.

People v. George North. Exceptions from Ingham. Violation of liquor law. Submitted, May 7, 1908. Reversed, July 13, 1908. 117 N. W. 63; 153 Mich. 612.

People v. Philip Boos, Sr. Error to superior court of Grand Rapids. Selling liquor without paying tax. Submitted, Nov. 19, 1908. Affirmed, February 2, 1909. 15 D. L. N. 1048; 120 N. W. 11.

People v. Fahle Burman, Albert Manio, Paivio Sirvio, Charles Waali, Fred Helander, Louis E. Henderson, Charles Ahonen, Leo L. Kaukki, Nick Tietavainen, Frank Aaltonen. Error to Houghton. Convicted of violating city ordinance in breaking the peace. Submitted, June 12, 1908. Affirmed, Sept. 10, 1908. 117 N. W. 589; 154 Mich. 150.

People v. Edwin L. White. Exceptions from Clinton. Burglary. Submitted, May 7, Affirmed, July 13, 1908. 117 N. W. 161; 153 Mich. 617.

People v. Harlow R. Greene. Exceptions from recorder's court of Detroit. Assault and battery. Submitted, Nov. 19, 1908; Affirmed, March 3, 1909. 119 N. W. 1087.

People v. Julius Van Driesche. Error to recorder's court of Detroit. Assault with intent to do great bodily harm less than the crime of

murder. Submitted, June 12. Affirmed, September 10, 1908. 117 N. W. 587; 154 Mich. 158.

People v. Alex Dow. Error to recorder's court of Detroit. Convicted of driving a motor car at a rate of speed exceeding eight miles an hour. Submitted, Nov. 19. Affirmed, December 14, 1908. 118 N. W. 745.

People v. William Andre. Exceptions from Eaton. Obtaining money by false pretenses. (No. 22, 845). Submitted, June 12. Reversed, July 1, 1908. 117 N. W. 55; 153 Mich. 531.

People v. Frank L. Hoffman. Exceptions from St. Clair. Simple assault. Submitted, June 11. Affirmed, Sept. 10, 1908. 117 N. W. 568; 154 Mich. 145.

People v. Louis Moore. Exceptions from Livingston. Selling liquor without having paid the tax. Submitted, Nov. 19. Affirmed, Dec. 14, 1908. 118 N. W. 742.

People v. John J. Reycraft. Error to Emmet. Assault and battery. Submitted, Februray 11. Affirmed, April 28, 1909. 16 D. L. N. 175; 120 Mich. 993.

People v. Charles Clark. Error to recorder's court of Detroit. Murder. Submitted, February 11. Reversed and new trial ordered, March 3, 1909. 15 D. L. N. 1125; 119 N. W. 1094.

People v. Max Minney. Error to Berrien. Maiming a horse. Submitted, Nov. 19, 1908. Reversed and new trial ordered, March 3, 1909. 15 D. L. N. 1094; 119 N. W. 918.

People v. George F. Stickle. Exceptions from superior court of Grand Rapids. Wife desertion. Submitted, February 11. Reversed and new trial granted, May 25, 1909. 16 D. L. N. 204; 121 N. W. 497.

People v. Andrea Vitali. Error to recorder's court of Detroit. Murder in second degree. Submitted, February 11. Affirmed, April 24, 1909. 16 D. L. N. 140; 120 N. W. 1003. (see also In re Vitali, habeas corpus, in this report.)

People v. Elmer Klise. Error to Emmet. Assault with intent to do great bodily harm less than the crime of murder. Submitted, February 11. Conviction set aside and new trial ordered, April 24, 1909. 16 D. L. N. 131; 120 N. W. 989.

People v. John Coffey. Exceptions from Charlevoix. Convicted of having undersized white fish in his possession in violation of P. A. 88 of 1899, Sec. 2. Submitted, Nov. 19. Affirmed, December 18, 1908. 15 D. L. N. 947; 118 N. W. 732.

People v. Dean Converse. Error to Wexford. Violation of liquor law. Submitted, February 15. New trial ordered, May 26, 1909. 16 D. L. N. 221; 121 N. W. 475.

People v. William Peterson. Error to Wexford. Violation of local option law. Submitted, February 15. Conviction set aside and defendant discharged, April 6, 1909. 16 D. L. N. 73; 120 N. W. 570.

People v. Henry G. Smith. Error to recorder's court of Detroit. Convicted of using and operating a motor vehicle without registration thereof, as required by act 196 P. A. 1905. Submitted, February 11. Affirmed, March 30, 1909. 16 D. L. N. 27; 120 N. W. 581.

People v. George Mindeman. Exceptions from Calhoun. Larceny. Submitted, February 11, reversed and new trial ordered, June 7, 1909. 121 N. W. 488.

People v. John Gordon and Christian Trier. Exceptions from Saginaw. Keeping saloon open on Sunday. Submitted, February 15. Affirmed, April 6, 1909. 16 D. L. N. 78. 120 N. W. 578.

People v. James Burke and Charlie Thompson. Error to Mecosta. Convicted of destroying a bank safe with intent to commit larceny. Submitted, April 29, and Reversed and a new trial ordered, May 26, 1909. 16 D. L. N. 268; 121 N. W. 282.

People v. G. Edward Vogt. Exceptions from recorder's court of Detroit. Perjury. Submitted, April 29. Conviction set aside and prisoner discharged, May 25, 1909. 16 D. L. N. 189; 121 N. W. 293.

People v. Gustave Meert. Exceptions from recorder's court of Detroit. Assault with intent to kill. Submitted, April 29. Affirmed, May 26, 1909. 16 D. L. N. 263; 121 Mich. 318.

People v. Maxmillian Wolff. Exceptions from recorder's court of Detroit. Embezzlement. Submitted, April 30. Affirmed, June 7, 1909. 16 D. L. N. 316; 121 N. W. 754.

People v. Edward Beebehyser. Exceptions from recorder's court of Detroit. Embezzlement. Submitted, April 30, reversed and defendant discharged, June 7, 1909. 16 D. L. N. 312; 121 N. W. 751.

HABEAS CORPUS CASES DISPOSED OF.

SUPREME COURT.

In re Andrea Vitali. Application for writ of habeas corpus to obtain release from imprisonment in the State Prison at Jackson. Submitted, June 9. Petition denied and prisoner remanded, July 1, 1908. 116 N. W. 1066; 153 Mich. 514. (See also case of People v. Vitali in this report).

CIRCUIT COURTS.

Oakland County.

In re Edmund Bachman. Application of Myrtle Bachman for a writ of habeas corpus to secure the release of Edmund Bachman from the Eastern Michigan Asylum for the Insane. Submitted, Petition dismissed and writ denied, April 10, 1909.

CRIMINAL CASES PENDING.

SUPREME COURT.

People v. John Blake. Error to Jackson. Submitted, June 17, 1909.

People v. Peter Kemppainen. Certiorari to Houghton.

People v. Clara Connelly. Error to recorder's court of Grand Rapids. Submitted, May 7 and 8; re-argued, Oct. 6, 1908.

People v. Wm. Dunnigan. Error to Hillsdale, No. 22643.

People v. Charles Drolet. Exceptions from recorder's court of Detroit. Submitted, April 29, 1909.

People v. Fred Dumas, alias Ed. Burke and Zavier Kruyzer.

People v. William Andre. No. 23, 187. Submitted, April 29, 1909. (See also People v. Andre. No. 22, 845, among "Criminal Cases Disposed of.")

People v. Charles H. Van Alstyne. Submitted, April 29 and 30, 1909.

People v. Charles L. Wilson. Submitted, April 30, 1909.

People v. Dennis Williams.

People v. Hanna Turja.

People v. John Alexander.

People v. Frank P. Glazier.

People v. Henry Norman.

People v. Hugh Doyle.

People v. Henry Belton and George Stiles.

People v. Norman B. Anderson.

CRIMINAL CASES PENDING.

CIRCUIT COURT.

People v. Henry J. Bresson. From recorder's court, city of Kalamazoo.

HABEAS CORPUS CASES PENDING.

SUPREME COURT.

In re Charles E. Blashfield. Supreme court. No. 21,860. Application for certiorari to review "matter of the discharge of Charles E. Blashfield in habeas corpus proceedings," filed August 13, 1906, and writ issued on the same day.

SCHEDULE "B."

Statement of mandamus cases and a prohibition case.

MANDAMUS CASES DISPOSED OF.

SUPREME COURT.

Knights of the Modern Maccabees, Ladies of the Modern Maccabees, Knights of the Maccabees of the World, and Ladies of the Maccabees of the World v. James V. Barry, Commissioner of Insurance. Application for mandamus to compel the commissioner to revoke an order made Nov. 1, 1907, requiring relators and other fraternal beneficiary associations doing business in this state to conform to the provisions of act 180 P. A. 1907. Submitted, March 17. Writ granted, Nov. 30, 1908. 118 N. W. 585; 155 Mich., 693.

American Health and Accident Insurance Co. v. James V. Barry, Commissioner of Insurance. Application for mandamus to compel the commissioner to renew relator's license to do business in this state. Submitted, June 27. Writ denied, September 10, 1908. 117 N. W. 564; 154 Mich. 193. (see also case of People, etc. v. Am. H. & A. Ins. Co., proceedings for appointment of receiver, in this report).

Henry E. Chase, Deputy Attorney General, v. John W. Adams, Kalamazoo Circuit Judge. Application for mandamus to compel the circuit judge to order the issuance of subpoenas in the usual form in criminal case. Submitted, June 27. Writ granted, September 15, 1908. 117 N. W. 660; 154 Mich. 271. (In re People v. Bresson and Armour & Co. v. Dairy and Food Commissioner).

Thomas J. Bresnahan, Prosecuting Attorney, Cass county, v. Walter H. North, Acting Cass Circuit Judge. Application for mandamus to compel the circuit judge to set aside an order for change of venue. Submitted, October 6. Writ granted, November 2, 1908. 117 N. W. 1053; 154 Mich. 491.

Leo W. Kerbs v. State Veterinary Board. Application for mandamus to compel the board to register relator under the provisions of act 244, P. A. 1907. Submitted, October 6. Writ denied, November 2, 1908. 118 N. W. 4; 154 Mich. 500.

Charles Line v. Board of Election Canvassers of Menominee County. Application for mandamus to compel the board to reconvene and recount

the ballots cast in said county at the general primary election, September 1, 1908, for the nomination for prosecuting attorney. Submitted, September 29. Writ granted, October 1, 1908. 117 N. W. 730; 154 Mich. 329.

James B. Bradley v. Board of State Canvassers, (No. 23,068). Fred M. Warner v. same. (No. 23,068½). Mandamus by James B. Bradley to compel the board to proceed with a recount in accordance with relator's interpretation of the primary election law.

Prohibition and mandamus by Fred M. Warner to compel said board to refrain from recounting in accordance with a ruling of said board and to proceed in accordance with relator's interpretation of said law.

Submitted, September 25. Writ denied to relator Bradley and granted to relator Warner, September 28, 1908. 117 N. W. 649; 154 Mich. 274.

James B. Bradley v. Board of State Canvassers. (No. 23,074.) Application for mandamus to throw out the entire vote of the township of Dwight, Huron county, of the Primary election of September, 1908, for the nomination for governor on the republican ticket. Case not heard as relator withdrew from the nomination contest.

John E. Bird, Attorney General, ex rel. John S. Beers, v. Board of Canvassers of Seventh Senatorial District. Application for mandamus to compel the board to reconvene and to treat all votes cast for Charles E. White, as void, in view of the fact that said White was prosecuting attorney at the time of the election. Submitted and application denied on the same day, December 3, 1908. 118 N. W. 584; 155 Mich. 44.

William G. Jennings v. State Veterinary Board. Application for mandamus to compel the board to register relator. Submitted, April 6. Writ granted, April 14, 1909. 16 D. L. N. 101; 120 Mich. 785.

Fred Dusaw v. State Veterinary Board. Application for mandamus to compel the board to issue certificate of registration to relator. Submitted, May 4. Writ denied, June 7, 1909. 16 D. L. N. 317; 121 N. W. 759.

Michigan Central Railroad Company, et al. v. Alfred J. Murphy, Circuit Judge, Wayne county. Application for mandamus to compel respondent judge to set aside an order denying a preliminary injunction. (In re M. C. R. R. Co. v. Mich. Ry. Commission.) Submitted, April 13. Writ denied and cause remanded, April 29, 1909. 16 D. L. N. 168; 120 N. W. 1073.

MANDAMUS CASES PENDING.

SUPREME COURT.

The State of Michigan v. George S. Hosmer, and Morse Rohnert, Judges of the Circuit Court for the County of Wayne. (No. 20,823.) Argued and submitted June 3, 1905. Writ denied September 20, 1905. (12 D. L. N. 493; 104 N. W. 637.) Re-hearing granted October 31, 1905. Re-hearing pending. (This case is in re M. C. R. R. Co. v. State of Mich. charter case, Wayne circuit.)

The Regents of the University of Michigan v. James B. Bradley, Auditor General. No. 21,703.

William L. Thompson v. State Veterinary Board. No. 22,929.

John E. Bird, Attorney General, ex rel. Matthew J. Maguire v. Alfred J. Murphy, Wayne Circuit Judge. No. 23,313. Submitted, April 6. Re-argued, June 15, 1909.

Fidelity & Deposit Company of Maryland v. James V. Barry, Commissioner of Insurance. No. 23,369. Submitted, May 25, 1909.

CIRCUIT COURT.

Chase S. Osborn, Commissioner of Railroads, v. The Detroit Grand Haven & Milwaukee Railway Co. Wayne circuit court. Argued and submitted, Nov. 29, 30 and Dec. 1, 1904.

SCHEDULE "C."

Statement of quo warranto cases and certiorari to review quo warranto cases.

QUO WARRANTO CASES DISPOSED OF.

SUPREME COURT OF MICHIGAN.

The people of the State of Michigan, by Attorney General on the relation of George E. Ellis, Moses Taggart and Samuel A. Freshney v. John F. Calder, et al. Error to Kent. Quo Warranto to test the right of respondents to act as a corporation under the name of Grand Rapids Hydraulic Co. There was judgment of ouster by the circuit court and respondents bring error. Submitted, January 13. Affirmed, July 13, 1908. 117 N. W. 314; 153 Mich. 724. (Appealed to supreme court of U. S.)

CIRCUIT COURT.

The People of the State of Michigan, ex rel. Charles A. Blair, Attorney General, v. Escanaba Water Company. Delta Circuit. Information in quo warranto to annul the franchise of the water company. Stipulation to discontinue was made in July, 1908.

John E. Bird, Attorney General, ex rel. Edwin G. Johnson, v. Wm. Clark Giberson. Lake circuit. Quo warranto to determine title to office of commissioner of schools. Stipulation to discontinue (without costs) filed Nov. 16, 1908.

QUO WARRANTO CASES PENDING.

SUPREME COURT, UNITED STATES.

The People of the State of Michigan, by Attorney General, on the relation of George E. Ellis, Moses Taggart, and Samuel A. Freshney, v. John F. Calder, et al. Appealed from supreme court of Michigan (see statement in first part of this schedule.)

SUPREME COURT, MICHIGAN.

The People of the State of Michigan by John E. Bird, Attorney General vs. Detroit, Grand Haven & Milwaukee Railway Company.

Quo Warranto to inquire into the right of the railway company to exercise franchises under a claimed special charter.

A history of the proceeding will be found in the report for 1908 (p. 20). This proceeding, together with the tax case pending against the same defendant, appealed from the Ingham Circuit, was heard in the Supreme Court on March 2, 1909.

On June 7, 1909 (121 N. W. 814) the Supreme Court denied the relief prayed in the information on the ground that the same subject matter or cause of action had been previously adjudicated in cases between the same parties.

An application will be made for a rehearing.*

John E. Bird, Attorney General, ex rel. John W. Linnell, v. Joseph E. Gay, et al. Quo warranto to determine by what right the "Evergreen Bluff Mining Company" claims to be a corporation.

CIRCUIT COURTS OF MICHIGAN.

John E. Bird, Attorney General, v. Michigan Sanitarium & Benevolent Association, a corporation. Quo warranto. Calhoun circuit. After the supreme court affirmed the order of the circuit court over-ruling the demurrer, (as shown in the preceding part of this Schedule) the respondent filed its plea and answer in the circuit court in May, and replication was filed in November, 1908.

* NOTE.—Sch. "D", of this report contains statement of the tax case against the same company.

SCHEDULE "D."

Statement of Chancery cases in state courts and cases in equity in United States courts.

CASES IN EQUITY DISPOSED OF.

CIRCUIT COURTS OF THE UNITED STATES.

Thomas C. Platt, as President of the United States Express Company v. Perry F. Powers, Auditor General, et al. No. 3845.

This was a bill filed on behalf of the United States Express Company to restrain the enforcement of the taxes upon its property for the year 1903.

The details of this case are given in the 1908 report (p. 28). A decree has been entered declaring the taxes assessed against the defendant valid in part, which results in practically all of the taxes claimed by the state being collected. The tax of $2,719.37 has been paid to the state treasurer.

CHANCERY CASES DISPOSED OF.

SUPREME COURT OF MICHIGAN.

Elijah Haney v. Archie T. Miller, James B. Bradley, Auditor General, and Elmer E. Gable, County Drain Commissioner. Appeal from Allegan circuit. Bill to redeem from a sale of land for taxes and to quiet title. From a decree dismissing the bill, complainant appeals. Submitted, November 19, 1907. Re-argued, June 2, 1908. Affirmed, July 1, 1908. (Costs to Defendant Miller.) Motion to vacate order for costs. Submitted, September 10, and decree was amended by inserting the words "without costs." Motion for re-hearing denied, December 21, 1908. 117 N. W. 71 and 745; 154 Mich. 337 and 351.

Charles M. Horton v. Salling, Hanson & Company, and James B. Bradley, Auditor General. Appeal from Otsego circuit, in chancery. From a decree for defendants, complainant appeals. Submitted, November 11, 1908. Reversed, March 3, 1909. Motion for re-hearing submitted, May 11, 1909.*

James W. Harrington v. Edward D. Dickinson, County Drain Commissioner, Frank J. Dibble, County Treasurer, and James B. Bradley,

* Motion for rehearing denied (with costs) July 15, 1909.

Auditor General. Appeal from Calhoun circuit, in chancery. From a decree sustaining a demurrer to the bill, complainant appeals. Submitted, October 14. Affirmed, December 21, 1908. 15 D. L. N. 996; 118 N. W. 931.

John E. Bird, Attorney General, ex rel. Joseph L. Hudson, et al., v. City of Detroit, et al. Appeal from Wayne circuit, in chancery. Bill to restrain the enforcement of an ordinance. From a decree for complainant, defendant appeals. Submitted, June 15. Affirmed, July 1, 1908. 15 D. L. N. 502; 153 Mich. 525.

John E. Bird, Attorney General, ex rel. Allen H. Zacharias, et al., v. Board of Education of the City of Detroit, and Frank E. Doremus, City Controller. Appeal from Wayne, circuit, in chancery. Bill to enjoin payment of an increase of salary to the superintendent of schools. From a decree sustaining a demurrer to the bill, complainant appeals. Submitted, June 10. Affirmed, November 30, 1908. 118 N. W. 606; 154 Mich. 584.

Pierre Viaus Maple Co., v. Arthur C. Bird, Dairy and Food Commissioner. Appeal from Delta circuit, in chancery. Bill to enjoin interference with the sale of certain foods.. From a decree overruling a demurrer to the bill, defendants appeal. Submitted, June 8, reversed and bill dismissed, September 10, 1908. Motion for re-hearing submitted, October 9. Motion for re-hearing denied (with costs), November 2, 1908. (Costs collected as shown in Sch. "I.") 117 N. W. 553; 154 Mich. 73.

John E. Bird, Attorney General, ex rel. Allis-Chalmers, Company, v. Public Lighting Commission of the City of Detroit. Appeal from Wayne circuit, in chancery. Bill to restrain acceptance of a contract. From a decree for defendant complainant appeals. Submitted, Nov. 10. Reversed, Dec. 21, 1908. 118 N. W. 935; 155 Mich. 207.

CHANCERY CASES DISPOSED OF.

CIRCUIT COURTS.

David C. Pelton, James H. Tuttle, Robert Robinson, John B. Mc Arthur, Lewis P. Swift and Arthur M. Gerow, v. William Erratt, S. Harris Embury, Myron B. Champion, Caroline Marsh, and Roscoe D. Dix, Auditor General, Cheboygan Circuit, in chancery. Controversy over county treasurer's bond. Stipulation for discontinuance signed, July 30, 1908.

The Pine River Lumber Company, H. N. Loud, George A. Loud, and Edward F. Loud, co-partners, doing business under the firm name of H. M. Loud's Sons Company, and the Detroit Lumber Company, v. Edwin A. Wildey, Commissioner of the State Land Office, Perry F. Powers, Auditor General, Peter E. Shien, State Trespass agent and James L. Sanborn. Iosco circuit, in chancery. Bill for injunction.

Stipulation for discontinuance, (without costs) mailed registered for filing, September 12, 1908.

Frank Hoffman v. Harry R. Solomon and James B. Bradley, Auditor General, Harry R. Solomon, Cross Complainant, Oscoda circuit, in chancery. Findings of the court filed, August 27, 1907.

The Detroit Union Railroad Depot and Station company and Fort Street Union Depot Company v. Roscoe D. Dix, Auditor General. Ingham circuit, in chancery. (Two cases). Bills for injunctions to restrain the auditor general from collecting certain taxes. Demurrers to the bills were over-ruled in February, 1901. Orders of discontinuance of causes and dismissals of bills of complaint (without prejudice) were filed March 13, 1909.

Myron J. Sherwood v. Otto B. Olson and James B. Bradley, Auditor General. Gogebic circuit, in chancery. Bill to quiet title. Decree for complainant, entered, February 23, 1909.

State of Michigan, by John E. Bird, Attorney General, v. Venice of America Land Company. St. Clair circuit, in chancery. Transferred to Macomb circuit in August, 1906. Tried in June, 1908. Opinion filed, Dec. 31, 1908. Decree filed and entered Feb. 13, 1909, (appealed to supreme court.)

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1898. Charles Wiltsie, petitioner, v. James B. Bradley, Auditor General, and Lillie B. DeCamp. Montmorency circuit, in chancery. Decree entered.*

George A. Hart and George W. Swigart v. John Kransniewski, Frank Kammski and James B. Bradley, Auditor General. Mason circuit, in chancery. Bill to set aside tax deed. Discontinued, in June, 1909.

Armour & Company, a corporation, v. Arthur C. Bird, Dairy and Food Commissioner, et al. Ingham circuit, in chancery. Submitted at May term, 1908. Decree entered, November 4, 1908. (Appealed to supreme court.)

The People of the State of Michigan, ex rel. John E. Bird, Attorney General, v. The American Health and Accident Insurance Company. Wayne circuit, in chancery. Bill for appointment of receiver. Heard and submitted, May 28, 1908, but owing to application for mandamus by the insurance company against the commissioner of insurance, receiver was not appointed until October 15, 1908 (after mandamus was denied, as shown in Sch. B.) Frederick T. Harward was appointed. Order allowing final account, annulling bond, and discharging receiver was filed, March 13, 1909.

*March 17, 1908.

George T. Kendall v. Reynold J. Kirkland, Ester Kirkland, J. Francis Campbell, and Fred M. Warner, George A. Wetherebee, Louis Kanitz, Elijah H. Foote, Alfred Milnes, Edward B. Allen, D. B. K. Van Raalte, organized as Board of Managers of Michigan Soldiers' Home. Kent circuit, in chancery. Bill for decree against defendant Reynold J. Kirkland. Soldiers' Home had no interest in this matter of foreclosure and no defense was made.

John E. Bird, Attorney General, ex rel. Allis-Chalmers Company, v. The Public Lighting Commission of the City of Detroit. Wayne circuit, in chancery. Decree September 5, 1908. (Appealed to supreme court.)

Henry M. Zimmermann, Commissioner of Banking v. The Springport State Saving Bank. Jackson circuit, in chancery. Bill for appointment of receiver, Lester P. Hoag was appointed, January 16, and discharged June 26, 1909.

Mary A. T. Sutton, et al., v. Edgar H. Towar, James B. Bradley, Auditor General, Daniel W. Powell and Thomas G. Sullivan, Ontonagon circuit, in chancery. Decree entered, December 17, 1908.

In re Petition of the Auditor General of the State of Michigan for the sale of certain lands for the taxes assessed thereon. Otto B. Olson v. John P. Hodges and Sophia H. Hollister, et al. Petition of Myron J. Sherwood to re-open the hearing on proceedings for a writ of assistance and for an order allowing petitioner to answer and be heard. Gogebic circuit, in chancery. Decree vacating and setting aside writ of assistance entered, Feb. 23, 1909.

John E. Bird, Attorney General, ex rel. E. Whitmore Ellis, v. Michigan Sugar Company, a corporation. Tuscola circuit, in chancery. Information in equity to restrain pollution of Cass river with beet pulp, etc. Decree permanently enjoining defendants from polluting the waters of the Cass river by depositing therein beet pulp or other injurious substances, etc., entered in May, 1909.

American Surety Company, of New York, intervening petitioner, Commissioner of Banking v. Chelsea Savings Bank, et al. Heard, April 26 and 29. Decree dismissing petition filed, May 18, 1909. (Appealed to supreme court.)

Effie A. Klotz v. James Sloan, as County Drain Commissioner, William Britton as County Treasurer, and Oramel B. Fuller, as Auditor General. Lenawee circuit, in chancery. Motion to dissolve injunction, argued and submitted, May 17, and decree sustaining demurrer and dismissing injunction, same day, May 17, 1909. Appealed to supreme court.)

In re petition of the Auditor General of the State of Michigan for and in behalf of said state for the sale of certain lands for the taxes

assessed thereon for the year 1904. In re petition of Wilhelmina LeRoy, filed in the above entitled cause. Saginaw circuit, in chancery. Opinion filed, in April. Claim of appeal filed May 21, 1909.

ATTORNEY GENERAL'S OFFICE.

Application of Matthew Finn for the use of the name of the attorney general in proceedings against William B. Thompson, Mayor et al., Commissioners of the Detroit Sinking Fund. Wayne circuit, in chancery. The attorney general refused to sign the bill of complaint, in August, 1908.

CASES IN EQUITY, PENDING.

CIRCUIT COURTS OF THE UNITED STATES.

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Edward W. Bishop v. Michigan Savings and Loan Association and George Lord, Chief of the Building and Loan Division of the State Department.

James C. Fargo, as President of the American Express Company, v. Perry F. Powers, Auditor General, et al. No. 3844.

A bill to restrain the enforcement of the taxes upon the property of the American Express Company in Michigan for the year 1903.

The 1908 report (p. 27) gives the details of this case. Testimony has been taken to sustain the issues presented by the pleadings. (See report of Bd. State Aud. pages 24 and 25 for proceedings in re proposed settlement of the case.)

Pacific Express Company v. Perry F. Powers, Auditor General, et al. No. 3846.

Pacific Express Company v. James B. Bradley, Auditor General, et al. No. 3878.

Pacific Express Company v. James B. Bradley, Auditor General, et al. No. 3919.

These are bills of complaint filed by the express company to restrain the defendants from proceeding to enforce against its property the taxes assessed thereon for the years 1903, 1904 and 1905.

For detailed information about these cases see the report for 1908 (p. 28.) Testimony is now being taken. By stipulation the present auditor general and members of the state board of assessors have been substituted for the defendants named in the bills.

Wirt E. Humphrey and Jake Filowitz v. The American Reserve Bond Company, et al. In re petition of the Western Trust and Savings Bank,

Receiver, v. Frank P. Glazier, State Treasurer, and George A Prescott, Secretary of State. September 17, 1906, heard and order entered directing State Treasurer and Secretary of State to deliver to the register of the court all moneys, securities, etc., deposited with them by the companies.

Daniel B. Scully and Maurice H. Scully, v. Arthur C. Bird, Dairy and Food Commissioner. Bill for injunction. Decree of this court dismissing the bill was reversed by the supreme court of the United States and the case is remanded for further proceedings. (See 1908 report, p. 22.)

Detroit, Grand Haven & Milwaukee Railway Company v. James B. Bradley, Auditor General (Equity No. 3965).

This is a bill filed by the railway company for the purpose of restraining the enforcement of the taxes assessed against its property for the years 1906-1907 under act 173, P. A. 1901, on the ground that it is protected from such taxation by a special charter.

NOTE.—For details of this proceeding see 1908 report, page 29.

CHANCERY CASES PENDING.

SUPREME COURT OF MICHIGAN.

Charles M. Horton v. Salling, Hanson & Co. Motion for re-hearing submitted, May 11, 1909.

Armour & Company, a corporation, v. Arthur C. Bird, Dairy and Food Commissioner, J. E. Jacklin and J. B. Barry. Appeal from Ingham circuit, in chancery.

The People of the State of Michigan by James B. Bradley, Auditor General v. Detroit, Grand Haven & Milwaukee Railway Company, et al. Appeal from Ingham circuit, in chancery.

This is a bill filed in the Ingham Circuit Court to enforce the statutory lien under Act 173 of 1901, against the railroad and property of the company for taxes assessed by the state board of assessors for 1903-1904 and 1905.

A history of the proceeding will be found in the report for 1908 (p. 29.) This proceeding together with the quo warranto case pending against the same defendant was heard in the supreme court on March 2, 1909.

A decision was handed down on June 7, 1909 dismissing the state's appeal on the ground that the same right of action had been adjudicated in the cases of Attorney General v. Joy (55 Mich. 94) and Powers v. D. G. H. & M. (201 U. S. 545).

A petition for a re-hearing will be filed.

NOTE.—See Sch. "C" of this report for statement of the quo warranto case.

CHANCERY CASES PENDING.

CIRCUIT COURTS.

In the matter of the petition of Perry F. Powers, Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1891, and previous years. In re petition of Henry Platz v. Perry F. Powers, Auditor General, and Arthur N. Englehardt. Presque Isle circuit court, in chancery. Petition for review.

In the matter of the petition of Perry F. Powers, Auditor General, for the sale of certain lands for the taxes assessed thereon for the year 1891, and previous years. In re petition of Henry Platz v. Perry F. Powers, Auditor General, and William Spens. Petition for review. Presque Isle circuit court, in chancery.

Benjamin C. Morse v. Edwin A. Wildey, Commissioner of the State Land Office, and Perry F. Powers, Auditor General. Alpena circuit, in chancery.

William H. Johnson and Esther E. Collins v. Perry F. Powers, Auditor General, and Charles Jaeger. Presque Isle circuit, in chancery.

Robert H. Rayburn, William H. Campbell and William Denton v. The Auditor General. Montmorency circuit, in chancery.

In the matter of the petition of Perry F. Powers, Auditor General, for the sale of certain lands, for the taxes assessed thereon for the years 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893. In re petition of Samuel A. Davidson v. Perry F. Powers, Auditor General, and Edwin A. Wildey, Commissioner of the State Land Office. Montmorency circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes of 1899. In re petition of Henry Beebe v. The Auditor General, and John A. Miller. Alpena circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for taxes assessed thereon. In re petition of Charles Keating v. The Auditor General, the Commissioner of the State Land Office, and Swan Rode. Alpena circuit, in chancery.

Alexander McQueen v. Auditor General. Bill to set aside taxes. Montmorency circuit, in chancery.

In re petition of Herman Besser to set aside sales of certain lands for taxes of 1887 to 1896, inclusive. Montmorency circuit, in chancery.

In re petition of Herman Besser to set aside sales of certain lands for taxes of 1881 to 1886, inclusive. Montmorency circuit, in chancery.

Henry Platz v. The Auditor General et al. Presque Isle circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes assessed thereon. In re petition of Estate of Albert Pack v. the Auditor General. Montmorency circuit, in chancery.

Henry Bolton v. The Auditor General, the Commissioner of the State Land Office and the Hecla Portland Cement and Coal Company, and Detroit Trust Company. Alpena circuit, in chancery.

Henry K. Gustin v. The Auditor General, the Commissioner of the State Land Office, the Hecla Portland Cement and Coal Company and the Detroit Trust Company. Alpena circuit, in chancery.

Huron Land Company, Limited, v. The Auditor General, the Commissioner of the State Land Office, Edward H. Gillman, trustee and The Turtle Lake Hunting and Fishing Club. Alpena circuit, in chancery.

Peter Owens v. The Auditor General, the Commissioner of the State Land Office and Herschel H. Hatch. Alpena circuit, in chancery.

Charles B. Williams v. The Auditor General, the Commissioner of the State Land Office, Edward H. Gillman, trustee et al. Alpena circuit, in chancery.

Estate of George N. Fletcher v. The Auditor General, the Commissioner of the State Land Office, Robert Beutel and Morris L. Courtright. Alpena circuit, in chancery.

Henry Platz, Administrator of the Estate of Fred Lincoln, deceased, v. The Auditor General, the Commissioner of the State Land Office, Albert C. Beutel, Mrs. Albert C. Beutel and Isabella Seymour. Alpena circuit, in chancery.

People of the State of Michigan, by Attorney General, v. Michigan Central Railroad Co. "Delinquent Tax Case." Ingham circuit, in chancery. Demurrer having been over-ruled by the supreme court (July 23, 1906; 145 Mich. 140) as shown in 1907 report, answer was filed October 31, 1906, and the case is being prepared for hearing at the coming September term of the circuit court.

George W. Moore, Commissioner of the Banking Department, v. State Bank of White Pigeon, Michigan et al. St. Joseph circuit, in chancery. Proceedings for appointment of receiver. J. Murray Benjamin, of White Pigeon, appointed receiver, August 2, 1904.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed against the same for the years 1894, 1897, 1899, 1895, 1896 and 1898. George B. Holmes, petitioner, v. Auditor General. Montmorency circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the years 1889, 1890, 1894, 1896, 1897, 1898, 1899 and 1900. Malcolm McPhee, petitioner, v. Auditor General. Presque Isle circuit, in chancery.

The Estate of Albert Pack, deceased, by Arthur Pack et al., v. Auditor General and Commissioner of the State Land Office. Presque Isle circuit, in chancery.

Frank A Turnbull, et al., v. Auditor General. Presque Isle circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1898. Charles Wiltsie, petitioner, v. Auditor General. Montmorency circuit, in chancery.

The People of the State of Michigan ex rel. Charles A Blair, Attorney General, v. Ann Arbor Sick and Accident Benefit Association, Washtenaw circuit, in chancery. Proceedings for appointment of receiver.

William K. Anderson et al., v. Township of Greenfield et al., and Board of State Tax Commissioners. Wayne circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1900 and prior years. Frank G. Kneeland, petitioner, v. Auditor General. Gratiot circuit, in chancery.

Frank Hoffman et al., v. Frank E. Palmer et al., and Auditor General. Oscoda circuit, in chancery.

The People of the State of Michigan ex rel. John E. Bird, Attorney General, v. Independent Order of the Red Cross. Wayne circuit, in chancery. Proceedings for appointment of receiver. Henry J. Eikoff, appointed, April 5, 1905.

James B. Peter v. Auditor General. Tuscola circuit, in chancery.

George L. Maltz, Commissioner of the Banking Department, v. City Savings Bank of Detroit et al. Wayne circuit, in chancery. Proceedings for appointment of receiver. Union Trust Co., of Detroit, was appointed receiver, February 11, 1902.

In re petition of the Auditor General for the sale of certain lands

for the taxes assessed thereon. In re Michigan Sanitarium and Benevolent Association. Calhoun circuit, in chancery.

Merritt Chandler v. Sarah E. Kinde and Auditor General. Cheboygan circuit, in chancery.

Merritt Chandler v. John St. Peter et al. and Auditor General. Cheboygan circuit, in chancery.

The Standard Hoop Company, Limited, v. Cora A. Lawrence Alling and James B. Bradley, Auditor General. Otsego circuit court, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1884. Matilda R. Male v. Archie T. Miller and Auditor General. Alpena circuit, in chancery.

Maria M. Smith v. James B. Bradley, Auditor General, William H. Rose, Commissioner State Land Office, William McLaughlin, County Drain Commissioner. St. Joseph circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed for the years, 1889-1902. William A. Blackburn and Will A. Prince v. James B. Bradley, Auditor General. Alpena circuit court, in chancery.

John E. Bird, Attorney General, ex rel. Village of Trenton, Township of Monguagon (Gross Isle) and the Sibley Quarry Company (a corporation), v. City of Wyandotte, Wayne circuit court, in chancery.

Myron J. Sherwood v. Isaac Erickson and James B. Bradley, Auditor General. Gogebic circuit court, in chancery.

Wisconsin & Michigan Railway Company v. James B. Bradley, Auditor General, and members of the State Board of Assessors. Ingham circuit court. On the taxes involved in this suit and of subsequent years, partial payments were received during this fiscal year and the total amount is shown in schedule "K."

Herman L. Swift, sole trustee for the Beulah Land Farm for Boys, v. Wm. H. Caldwell, J. W. Caldwell and James B. Bradley, Auditor General. Charlevoix circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes of 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1901 and 1902. L. D. Closser v. Auditor General. Alpena circuit, in chancery.

The Triangle Land Company, a corporation, v. John Hawley, James B. Bradley, Auditor General, defendant to cross-bill of defendant John Hawley. Bill to quiet title. Ontonagon circuit, in chancery.

John E. Bird, Attorney General, ex rel., B. Harriett Boydell, v. Boydell Bros. White Lead & Color Works. Wayne circuit, in chancery.

Charles R. Henry v. George Stovel, et al., James B. Bradley, et al. Alpena circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the years 1894, 1895, 1896, 1897, 1899 and 1903. Wm. T. Sleator v. James B. Bradley, Auditor General. Alpena circuit, in chancery.

James E. Sherman v. Donald McRae, as administrator estate of John McRae deceased and James B. Bradley, Auditor General. Ontonagon circuit, in chancery.

Henry M. Zimmermann, Com'r. of the Banking Department, of the State of Michigan, v. Chelsea Saving Bank et al. Washtenaw circuit, in chancery. Bill for appointment of receiver. W. W. Wedemeyer, appointed receiver, Dec. 5, 1907.

W. & A. McArthur Co., Limited, and other complainants, vs. Auditor General, et al.; petition of James W. Farrier, Treasurer of Montmorency County, that decrees be reopened. Montmorency circuit, in chancery.

Edward E. Ayer and other complainants, v. Auditor General, et al.; Petition of John Hoeft, Jr., Treasurer of Presque Isle County to re-open decrees. Presque Isle circuit, in chancery.

Henry M. Zimmermann, Com'r. of Banking, v. United Home Protectors' Fraternity. St. Clair circuit, in chancery. Bill for appointment of receiver. Horace G. Snover, of Port Huron, appointed receiver, March 31, 1908.

The Grand Trunk Railway Company v. Cassius L. Glasgow, George W. Dickinson, and James Scully, constituting the Michigan Railway Commission and the Detroit United Railway Company. Wayne circuit, in chancery. (Action to secure reversal of a certain order In re Sweers & Prefrock et al., v. G. T. Ry. Co.)

The Cleveland Cliffs Iron Company, a corporation, under the laws of West Virginia, v. John R. Gordon, Lewis Corbit, Rollin E. Drake, James B. Bradley, Auditor General, and Chicago & Northwestern Railway Company, a corporation under the laws of Michigan. Marquette circuit, in chancery.

Henry M. Zimmermann, Commissioner of Banking, v. Athens State & Savings Bank, et al. Calhoun circuit, in chancery. Bill for appointment of receiver, etc. Frank Wolf of Battle Creek, appointed receiver, September 3, 1908, restored to the stock-holders February 4 and authorized to resume business, February 8, 1909. (Matter of settlement with receiver pending.)

Huron Land Company, Limited, v. Detroit & Mackinac Railway Company, James D. Hawks, trustee, H. S. Waterman and James B. Bradley, Auditor General. Alpena circuit, in chancery.

Henry M. Zimmerman, Commissioner of Banking, v. Farmers & Merchants State Bank of Parma, Michigan. et al. Jackson circuit, in chancery. Bill for appointment of receiver, etc. Seymour H. Godfrey, appointed receiver, September 8, 1908.

Wm. W. Wedemeyer, Receiver, Chelsea Saving Bank, v. Victor D. Hindelang, Wm. J. Knapp, and Frank E. Ives. Washtenaw circuit, in chancery. Bill to enforce stockholders liability, in re Chelsea Savings Bank.

Mary McDonald v. Archie T. Miller, and James B. Bradley, Auditor General. Bay circuit, in chancery.

John E. Bird, Attorney General, ex rel. The People of the State of Michigan, v. The Continental Sugar Company, a corporation. Lenawee circuit, in chancery.

Pere Marquette Railroad Company, a corporation, v. Michigan Railroad Commission and Michigan United Railways Company. Wayne circuit, in chancery.

Michigan Savings Bank of Detroit, Michigan, v. Dime Savings Bank of Detroit, Michigan, Frederick C. Martindale, Secretary of State, Henry M. Zimmermann, Commissioner of Banking, and Thomas F. Farrel, Clerk of Wayne county. Wayne circuit, in chancery. Bill for injunction.

Michigan Central Railroad Company, et al., v. Michigan Railway Commission. Wayne circuit, in chancery. Bill for injunction to restrain the railway commission from enforcing an order as to excess baggage.

John E. Bird, Attorney General, ex rel. Mathew J. Maguire, v. Common Council of Detroit, et al. Wayne circuit, in chancery. Order made denying injunction, March 2, 1909, and writ of mandamus v. Judge Murphy applied for in supreme court (see Sch. B.)

John L. Doyle, v. The North Shore Lumber Company, Frank Roxbury and Auditor General. Schoolcraft circuit, in chancery.

In re Petition of the Auditor General of the State of Michigan for the foreclosure of the lien of the State of Michigan for the taxes of 1891, 1892, 1893 and 1894. John L. Doyle, petitioner, v. North Shore Lumber Company and Auditor General. Schoolcraft circuit, in chancery.

John E. Bird, Attorney General, ex rel. Township of Wyoming, et al., v. The City of Grand Rapids, et al. Superior court of Grand Rapids, in chancery.

Dayton W. Closser and Lenore D. Closser, v. Benjamin Robarge and Oramel B. Fuller, Auditor General. Alpena circuit, in chancery.

SCHEDULE "E."

Statement of proceedings for the collection of escheated estates.

ESCHEATED ESTATE MONEYS RECEIVED BY STATE TREASURER.

In re Fred A. Reynolds, deceased, Eaton Co., Sept. 1908....	$166 58
In re Annie E. Strong, deceased, Allegan Co., Dec. 1908....	239 04
In re Cornelius Curran, deceased, Livingston probate court. Order entered, March 30, 1909, directing payment of the residue of the estate to the state of Michigan, received April 1, 1909	1,075 70
Total	$1,481 32

ESCHEATED ESTATE CASES.

In which final orders have been entered, but money not as yet paid over to the state treasurer.

PROBATE COURTS.

In re Mary Greer, deceased. Grand Traverse county. Order made and entered, assigning and setting over the real and personal property to the board of escheats, July 17, 1906. Real estate, property in Traverse City, valued at about eight hundred dollars. Personal property, $95.92.

In re Emma Reidy, deceased. Shiawassee county. Estate consisted of a stock of drugs, valued at about $1,500.00, stocks, certificates of deposits and cash in bank, about $2,000.00 and real estate of about $2,000.00. Hearing, March 22, 1909, on petition of administrator for $250.00 for monument and petition granted. Order to sell certain personal property, entered, March 22, 1909.

ESCHEATED ESTATE CASES PENDING.

PROBATE COURTS.

In re Martha Sheldon, deceased, Barry county.
In re Jeremiah Wilbur, deceased, Barry county.
In re George C. Palmer, deceased, Muskegon county.
In re Emma Reidy, deceased, Shiawassee county, (see statement in re Reidy in preceding part of schedule).
In re Ebon Lavern Carter, deceased, Shiawassee county.
In re L. Fuller, deceased, Wayne county.

SCHEDULE "F."

Statement of inheritance tax proceedings:
1st: Inheritance tax cases disposed of in the various courts, etc.;
2nd: Inheritance taxes determined but *not* paid or only *partially* paid; also showing cases where Lis pendens has been filed to secure payment of tax, and amount of tax *now* due.
3rd: Inheritance tax cases pending.

INHERITANCE TAX CASES DISPOSED OF.

PROBATE COURTS.

In re Anastasia Cavanaugh, Wayne. Dismissed, December 14, 1908, no inheritance tax due.

In re Sarah W. Hyde, Wayne. Dismissed, December 14, 1908, no inheritance tax due.

In re Emilie Zimmermann, Wayne. Transfers in this estate were all to "first class" none of whom received two thousand dollars, therefore no tax was determined, and the matter was disposed of March 16, 1909.

In re Rosanna Schultz, Van Buren county. Lis pendens filed in March, 1908. Tax, $84.09, Interest, $26.30; Total, $110.39, paid, March 12, 1909.

INHERITANCE TAX CASES PENDING.

SUPREME COURT.

In re E. Crofton Fox, Appeal from Kent circuit. From a judgment of the circuit court on appeal from the probate court, determining the amount of inheritance tax, due, the estate appealed. Submitted, April 13. Affirmed, September 10, 1908. (117 N. W. 558; 154 Mich. 5.) Motion for re-hearing on behalf of the estate submitted in March, 1909, and re-hearing granted, May 25. Re-argued, June 14, 1909.

PROBATE COURTS.

In re Lucas Wolfschlager, Wayne.
In re Brooks B. Hazelton, Washtenaw.
In re Clark J. Whitney, Wayne.
In re Edward J. Hulbert, Wayne.
In re Sarah W. Hyde, Wayne.
In re Eunice P. Wilson, Wayne, Lis pendens.
In re Charles H. Dickerson, Wayne.
In re Francis F. Palms, Wayne, hinges on E. Crofton Fox case.
In re Samantha L. Woolsey, Wayne (transfers held taxable by circuit court. See p. 38, report 1907).

Inheritance taxes determined but *not* paid, or only *partially* paid; also showing cases where lis pendens has been filed to enforce payment of the tax, and amount of tax *now* due:

Name of estate of deceased.	County.	Tax due.	Determined.	Lis pendens filed.
Laura E. Burr, $18.50 received in 1905 and $451.93 in 1908	Ingham	$315 86	Dec. 31, 1902	
Joseph R. Hitchcock	Bay	68 14	July 31, 1903	
Anna B. Weiss	Bay	16 29	July 31, 1903	
Henry J. Parker	Oakland	22 50	June 29, 1903	July 14, 1903
Morris W. Miner	Oakland	34 17	June 29, 1903	Sept. 9, 1905
Stephen Nott Frazier ($10.26 paid in 1903)	Calhoun	30 72	April 20, 1903	
Mary Callan (lis pendens tax not determined)	Kent			Aug. 10, 1903
Florence Codde	Wayne	65 75	May 18, 1903	Sept. 17, 190
Ann T. Goggin	Kent	129 07	Nov. 24, 1905	
James Ovens	Lapeer	161 58	Jan. 18, 1905	Nov. 1, 1905
Forester Allison	Washtenaw	1 25	Feb. 6, 1904	Nov. 1, 1905
Thomas D. Sealey	Livingston	17 46	Feb. 19, 1904	Nov. 1, 1905
Henry C. Plummer (total tax was $346.32, of which $86.58 was paid in 1903)	Monroe	259 74	Jan. 17, 1903	Dec. 21, 1905

SCHEDULE "G."

Statement of proceedings relative to insane persons confined in State Asylums, containing: (a) Statement of money collected and paid to the state, through the efforts of attorney general, with the cooperation of medical superintendents of various asylums and judges of probate, as reimbursement to the state for the support of certain insane persons at state asylums; (b) Statement of status of proceedings for reimbursement; (c) Statement of proceedings for deportation and importation of insane persons for the fiscal year ending June 30, 1909.

Statement of money collected and paid to the state.

Name of patient.	County.	Amount.	Total.
EASTERN MICHIGAN ASYLUM.			
Beach, Aurilla	Oakland	$191 91	
Brockway, Elias E	Livingston	40 50	
Buell, Fannie L	Wayne	75 33	
Carpenter, Wm. H	Bay	90 00	
Cody, Elijah	Lapeer	144 00	
Cook, Jannette	Saginaw	60 00	
Dove, Lucy	Tuscola	568 80	
Frey, John A	Washtenaw	180 00	
Gould, S. H	Tuscola	218 35	
Landrock, Elisabeth	Wayne	200 00	
Lewis, Ellen	Wayne	126 50	
McQuade, Mary J	Macomb	132 00	
Markell, Melissa	Sanilac	128 00	
Noble, Grace	Oakland	180 68	
Peek, Harvey	Charlevoix	173 25	
Ritchie, Elisabeth	Tuscola	20 95	
Sharpey, Frank	Washtenaw	167 90	
Shumann, Johanna	Wayne	26 69	
Seeley, Amelia E	Oakland	1,066 79	
Truscott, John M	Shiawassee	180 68	
			$3,972 33
MICHIGAN ASYLUM.			
Adams, Anna C	Kent	$420 00	
Albers, Henry J	Allegan	50 00	
Anthony, Peter B	Ingham	298 18	
Armstrong, Jos	Kent	190 14	
Bark, Lewis M	Kent	180 00	
Barlow, R. W	Ingham	50 00	
Bass, Jas. H	Kent	144 00	
Beers, Sarah E	Hillsdale	307 79	
Binder, Fredericka	Calhoun	125 00	
Boardman, Margaret	Jackson	239 34	
Bonton, Mary L	Calhoun	120 00	
Brewer, Lydia W	Kalamazoo	35 00	
Briggs, Thursey J	Kalamazoo	108 00	
Brooks, George	Van Buren	160 00	
Bush, Clark O	Allegan	76 55	
Card, Chlorinda	Branch	86 00	
Coughlin, Mary	Van Buren	200 00	
Cox, Loretta L	Cass	600 00	
Donahue, John	Berrien	180 00	
Donahue, Mary	Ottawa	78 04	

Name of patient.	County.	Amount.	Total.
Doughty, Isaac	Kent	$306 74	
Douma, Alice	Allegan	12 50	
Ebert, Jno. Edward	Kent	245 00	
Failing, Lovina	Calhoun	120 00	
Fish, Franklin H	Kent	98 58	
Flora, Sarah C	Kent	3 97	
Foster, Samuel	Kent	145 00	
Frost, Floyd	Berrien	40 05	
Gorton, Lucy L	Barry	125 00	
Hall, Lewis C	Van Buren	160 00	
Hardesty, Alex	Kent	144 00	
Hoag, Martha	Lenawee	65 00	
Hodgetts, George	Kent	200 00	
Iliff, Nancy	Allegan	800 00	
Koesch, Anton	Kent	298 05	
Kraefft, Minnie	Van Buren	48 00	
Langston, Hiram	Berrien	614 41	
Lawyer, Elisabeth	Cass	20 16	
Leland, Margaret	Branch	266 29	
Lockwood, Helene	Kent	4 50	
Lord, Herbert J	Eaton	344 33	
Luh, William	Branch	400 00	
Maher, Phillip	Hillsdale	256 50	
Maltby, Chancey S	Eaton	72 00	
Mead, Agate	Kent	20 00	
Morris, James	Kent	125 00	
Murchn, Lissie	Allegan	13 50	
Murray, James A	Kalamazoo	51 67	
Nobles, Sarah E	Branch	155 54	
O'Neal, Chas	Kent	220 00	
Parker, Lovina	Allegan	73 57	
Parnyea, Daniel	Monroe	133 00	
Peck, Geo. W	Barry	133 60	
Porter, Eliza	Allegan	108 00	
Powers, Lovina	Eaton	25 00	
Pulsipher, Julian D	Allegan	156 00	
Rice, Emma R	Kent	75 00	
Rockwood, Geo. A	Branch	93 43	
Schmelzle, Ignaz	Kalamazoo	112 50	
Shears, Chas. R	Kent	79 19	
Shook, Edward	Kalamazoo	75 00	
Shook, Hannah	Kalamazoo	27 24	
Sloan, Fred	Calhoun	188 18	
Thiel, Peter	Ottawa	104 00	
Upright, John	Eaton	175 00	
Upton, Stephen C	Jackson	188 39	
Wilson, John	Kent	250 00	
Whiteside, Wm	Kalamazoo	200 00	
			$11,220 92
NORTHERN ASYLUM.			
Chapman, Edw	Iosco	$486 42	
Bond, Wm	Newaygo	10 92	
Clark, Charlory	Wexford	540 00	
Hartog, Wm	Muskegon	37 32	
Hollingsworth, Edwin	Ionia	547 97	
Hoffman, Elizabeth	Ionia	95 00	
Holloway, John	Ionia	147 18	
Miller, Henry R	Charlevoix	117 00	
Shute, Sarah E	Montcalm	298 44	
Snyder, Addie E	Ionia	56 00	
Taylor, Hannah G	Ionia	60 00	
Van Buren, Cora	Ionia	23 07	
			2,409 32
UPPER PENINSULA HOSPITAL.			
Denning, Margaret Ann	Mackinac	$108 00	
Swanson, Ida	Delta	100 00	
			208 00
			$17,810 58

REIMBURSEMENT MATTERS DISPOSED OF.

CIRCUIT COURTS.

In re Louis Rumagi, Kalamazoo circuit. Appeal from order of the probate court disallowing the state's claim for reimbursement. Submitted, April 21. Order entered, May 1, 1909, appointing Edwin J. Phelps, guardian and directing that he pay a certain amount to the county, $35.00 to the state of Michigan, pay the costs of the proceedings, his own expenses and services and the balance of the estate to be paid to the wife for herself and child.

PROBATE COURTS.

Joseph Armstrong. Michigan Asylum. Probate Court. Kent County. Order made July 21st, 1908, directing payment of $118.14 in 30 days and $24 quarterly.

Isaac Doughty. Michigan Asylum. Probate Court. Kent County. Order made July 24, 1908, directing payment of $198.74 in 30 days and $36 quarterly.

John Holloway. Northern Michigan Asylum. Ionia County. Before commissioners on claims. Received Jan. 26, 1909, $147.18, being balance available out of the estate for the payment of the state's claim.

Cora Van Buren. Northern Michigan Asylum. Ionia County. Before commissioners on claims. State filed petition for revival of commission on claims December 16, 1907, which was allowed. State's claim filed and allowed July 22d, 1908. Received $23.07, being balance available for the payment of claim of the state.

Nancy Iliff. Michigan Asylum. Probate Court. Allegan County. Petition filed December 15, 1908. Order made Jan. 25, directing guardian to pay $800 and $100 annually.

Lela Simmonds. Michigan Asylum. Probate Court. Lenawee County. Petition filed August 6, 1908. Order made May 25, 1909, directing the payment of $50.00 annually.

Amelia Seeley. Eastern Michigan Asylum. Oakland County. Before commissioners on claims. State's claim filed July 15, 1908, and allowed by commissioners. October 5, 1908, received check for $1,066.79 in payment of portion of claim not barred by statute of limitations.

Mack Rudd. Michigan Asylum. Probate Court. Cass County. State's claim filed August 17, 1908, against the estate of the father of patient. Hearing November 11, 1908. Claim disallowed by reason of order of Probate Court relieving father from support.

Ida M. Stuck. Michigan Asylum. Allegan County. Before Probate Court acting as commissioners on claims. State's claim allowed Jan. 25, 1909, but not yet paid.

Charlory Clark. Northern Michigan Asylum. Probate Court. Wexford county. Petition filed Feb. 2, 1909. Order made Feb. 23, 1909, directing payment of $500 in 30 days and $40 quarterly.

Mary Smith. Northern Michigan Asylum. Probate Court. Muskegon County. Petition filed Feb. 3, 1909. Order made June 8, directing payment of $35 in 30 days and $35 quarterly.

Edward Hollinsworth. Northern Michigan Asylum. Probate Court. Ionia County. Petition filed March 8, 1909. Order made March 30, 1909, directing the payment of $547.97 to apply on state's claim.

S. H. Gould. Eastern Michigan Asylum. Probate Court. Tuscola County. Petition filed March 4, 1909. Order made March 25, 1909, directing payment of $218.55 in ten days and $37 quarterly and full cost of maintenance as soon as pension is increased.

Katie Seelman. Michigan Asylum. Probate Court. Ottawa County. Petition filed May 15, 1909. Order made June 25, 1909, directing payment of $204.60 to Ottawa County; $438.57 to the state of Michigan and entire future cost of maintenance.

Fannie L. Buell. Eastern Michigan Asylum. Wayne County. Before commissioners on claims. State's claim allowed and paid Feb. 2, 1909. The estate consisted of a pass book of the City Savings Bank of Detroit showing $274.20, which was assigned to the state of Michigan and dividends will be used to reimburse the state.

Lucy J. Dove. Eastern Michigan Asylum. Tuscola County. Before commissioners on claims. State's claim allowed at $1,030.50. Estate settled and state received $568.80, its pro rata share out of the estate.

Elizabeth Landrock. Eastern Michigan Asylum. Wayne County. Before commissioners on claims. State's claim was allowed at $1,260. The estate consisted of land in which the interest of Mrs. Landrock was doubtful and which was encumbered with a large number of tax titles. Settled Feb. 6, 1909, by payment of $200.00, the state giving an assignment of its claim.

Rose N. Wescott. Eastern Michigan Asylum. Probate Court. Genesee County, acting as commissioners on claims. State's claim allowed December 16, 1908. Estate not yet settled.

Franklin Fish. Michigan Asylum. Probate Court. Kent County. Petition filed October 21, 1908. Michigan Trust Company appointed guardian. $98.58 received, which exhausts the estate.

Edward Shook. Michigan Asylum. Probate Court. Kalamazoo County. Petition filed Feb. 12, 1909, for additional reimbursement. Order made March 5, 1909, to pay $425.39 in 30 days and $50 quarterly.

DEPORTATION MATTERS DISPOSED OF.

William J. Wheaton, confined at Michigan Asylum. Deportation to California. Arrangements completed to return this patient to the care of his sister in California.

Albert E. Bronson. Northern Michigan Asylum. Gratiot County. Reported to be a resident of Iowa. Matter was investigated by the department and facts found not sufficient to warrant deportation.

Michael Carrol. Northern Michigan Asylum. Grand Traverse County. Reported to a resident of Illinois. Arrangement made for deportation to Detention Hospital, Chicago, May 22, 1909.

Korian Domboorian. Northern Michigan Asylum. Reported to be a resident of New York. Correspondence showed that the New York authorities were keeping one Louis Wax, a resident of Michigan and a mutual exchange was agreed upon.

Emil Aurich. Northern Michigan Asylum. Muskegon County. Investigated and found that residence could not be established in Wisconsin so as to secure deportation.

Nellie Adams. Incompetent person. Eaton County. Deported to England, March 31, 1909, through United States Commissioner of Immigration.

Marie Czychy. Eastern Michigan Asylum. Deportation completed to Canada, November 30, 1908.

William R. Osler. Michigan Asylum. Berrien County. The department has been unable to secure the co-operation of the Indiana authorities in determining the residence of this patient and the matter has been dropped.

Webster Neill. Michigan Asylum. Hillsdale County. The department has been unable to secure the co-operation of the Ohio authorities in determining the residence of this patient and the matter has been dropped.

IMPORTATION MATTERS DISPOSED OF.

Louis Wax. Reported as a resident of the state of Michigan and it was agreed that if New York would retain Wax, Michigan would retain Korian Domboorian.

REIMBURSEMENT MATTERS PENDING.

CIRCUIT COURTS.

In re Antonia Van Haaften. Appeal from Probate Court to Circuit Court by State from order dismissing petition for reimbursement.

People v. Charles Taylor. Ionia Circuit Court. Suit to recover cost of maintenance at State Asylum (is listed among assumpsit cases, in Schedule "H.")

PROBATE COURTS.

Maria Field. Probate Court. Genesee County. Eastern Michigan Asylum. Petition filed November 30, 1907, for reimbursement. State's claim allowed March 6, 1908, and order made directing half of proceeds of sale of real estate to be applied upon Sate's claim. The real estate has not yet been sold.

Thomas M. Hill. Eastern Michigan Asylum. Wayne County. Order for reimbursement held pending a settlement in the court of the guardian's account.

Grace Riley. Michigan Asylum. Probate Court. Jackson County. Further proceedings in this matter are being held open pending the settlement of the estate to which the patient is an heir.

Lucy L. Gorton. Michigan Asylum. Probate Court. Barry County. Petition filed May 10, 1909, asking for increase of payment.

David Sly. Northern Michigan Asylum. Probate Court. Wexford County. Petition filed May 15, 1909. Guardian appointed June 1, 1909, with instructions to collect the pension.

Marinus Deboe. Michigan Asylum. Probate Court. Ottawa County. Petition filed May 15, 1909.

Nellie Fox. Michigan Asylum. Probate Court. Eaton County. Petition filed June 3, 1909, to compel father, Amos Fox, to contribute support.

Chloe Underwood. Michigan Asylum. Probate Court. Eaton County. Petition filed June 3, 1909.

Nellie A. Wright. Michigan Asylum. Ottawa County. Before Commissioners on claims. Claim of state filed March 24, 1909.

Edward Van der Wiele. Eastern Michigan Asylum. Bay County. Now deceased. Petition for appointment of administrator filed by the Attorney General on behalf of state as creditor April 30, 1909. Appointment of administrator pending.

SCHEDULE "H."

Statement of assumpsit, ejectment, trespass on the case and miscellaneous cases.

ASSUMPSIT CASES DISPOSED OF.

CIRCUIT COURTS.

The People of the State of Michigan v. The Metropolitan Surety Company. Ingham circuit. Assumpsit. Demurrer of defendant surety company was over-ruled by opinion of the circuit court, filed March 12, 1909, and defendant was given twenty days to plead to the declaration (the same as in the other four "surety company cases") but March 29, notice of the dissolution of the company and notice to present claims to the receiver was received (see also "In re claim of the State of Michigan v. The Met. Surety Co.," among "Miscellaneous Cases" at the end of this Schedule.)

TRESPASS ON THE CASE DISPOSED OF.

CIRCUIT COURTS.

Oliver N. Russell v. Otis Fuller. Eaton circuit. Trespass on the case for alleged damages of ten thousand dollars for alleged unlawful, etc., detention in the Michigan Reformatory at Ionia, Michigan, defendant being the warden of such reformatory. Summons received in October, 1904. Motion for security for costs, etc., filed in November, 1904. Nothing further was done in the matter on behalf of the plaintiff and in November, 1908, the attorney general obtained a stipulation discontinuing the cause (without costs).

Spencer W. Haynes v. John Newell Holcomb. Kent circuit. Action for damages against defendant Holcomb, as assistant surgeon at the Michigan Soldiers Home. Summons and declaration were received from the adjutant of the home, April 14, 1909, and he was promptly advised that it did not appear that it was the duty of the attorney general to defend the case.

ASSUMPSIT CASES PENDING.

CIRCUIT COURT OF THE UNITED STATES.

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

American Express Company v. Perry F. Powers (Auditor General), and Daniel McCoy (State Treasurer). Demurrer filed in August, 1906.

SUPREME COURT OF MICHIGAN.

The People of the State of Michigan v. The Bankers Surety Company.

The People of the State of Michigan v. Federal Union Surety Company.

The People of the State of Michigan v. United States Fidelity and Guaranty Company.

The People of the State of Michigan v. The Title Guaranty and Surety Company.

Certiorari to review action of Ingham circuit court in overruling demurrers of defendants surety companies (March 12, 1909.) Submitted in the supreme court, June 17, 1909.

John Robinson, doing business as Robinson Cider & Vinegar Company, plaintiff and appellee, v. Judson Harmon, Receiver of the Pere Marquette Railroad Company. Error to Berrien circuit. Two cases, supreme court, Nos. 22,766 and 22,767. Submitted, June 15. Affirmed, September 15, 1908. (117 N. W. 661; 664) Motion for *re-hearing* submitted, October 27. Denied, with costs, in No. 22,766 and *granted* in No. 22,767 (the penalty case); December 21, 1908.

CIRCUIT COURTS OF MICHIGAN.

George A. Loud, Henry M. Loud and Edward F. Loud, co-partners doing business under the firm name of Henry M. Loud's Sons, plaintiffs, v. Edwin A. Wildey, Commissioner of the State Land Office; Perry F. Powers, Auditor General; Peter E. Shien, State Trespass Agent, and George F. Russell, State Trespass Agent, Defendants. Assumpsit. Iosco circuit.

George A. Loud, Henry M. Loud and Edward F. Loud, co-partners doing business under the firm name of Henry M. Loud's Sons, Plaintiffs, v. Edwin A. Wildey, Commissioner of the State Land Office; Peter E. Shien and George F. Russel, State Trespass Agents, defendants. Assumpsit. Iosco circuit.

Actions to recover penalty under Section 7048, C. L. 1897. Wayne circuit.

The People, etc. v. James G. Barton.
The People, etc. v. Henry Merdian.
The People, etc. v. Charles R. Wilson.
The People, etc. v. Joseph F. Doyle.
The People, etc. v. Oliver N. Gardner.
The People, etc. v. Charles C. Canney.
The People, etc. v. Hugh O'Connor.

The People v. Mrs. Rosentha Giesy. Assumpsit. Ingham circuit. (In re inheritance tax on transfers in re Laura E. Burr estate.)

The People of the State of Michigan v. Charles Taylor. Ionia circuit. Assumpsit to collect $2,675.00 for support of defendant in State Asylum, Ionia.

Consolidated Coal Company v. Board of Trustees of the Michigan Employment Institution for the Blind. Saginaw circuit. Assumpsit to collect price of certain coal furnished the employment institution.

EJECTMENT CASES PENDING.

CIRCUIT COURTS.

Jane A. Sheldon v. John D. Dingham, Arenac circuit.

Charles B. Williams v. Auditor General, et al. and Gilbert Olson, et al. Alpena Circuit Court.

Henry Platz, Administrator, Estate of Fred Lincoln, deceased v. Auditor General, et al. and Albert C. Beutel, et al. Alpena Circuit Court.

TRESPASS ON THE CASE PROCEEDINGS PENDING.

CIRCUIT COURTS.

Michigan Central Railroad Company v. The State of Michigan. Wayne circuit. (No. 48,210.) "Charter case." Trespass on the case, under Act 4, special session October, 1900. A suit to recover alleged damages for repeal of charter. Demurrer over-ruled, order entered May 16, 1906. Taken to the supreme court by certiorari and argued and submitted in the supreme court, December 18, 1906. Affirmed, April 30, 1907. (111 N. W. 88; 148 Mich. 151.) Pending in the circuit court, contingent upon the outcome in the "Delinquent Tax case."

Joseph S. McDowell, Assignee of Edward Wallerstein & Company, a corporation, v. Otis Fuller, Warden, Michigan Reformatory, formerly

State House of Correction and Reformatory at Ionia. Wayne circuit court. Order for change of venue to Jackson county, filed in February, 1906, and case transferred to Jackson circuit.

MISCELLANEOUS CASES PENDING.

In re claim of the State of Michigan v. The Firemen's Insurance Company, of Baltimore, Maryland.

Claim was sent to the receiver, March 17, 1904, for.....		$979 31
First dividend was received in November, 1904..	$293 79	
Second and third dividends in May, 1906.....	121 22	
Credit of payment by Providence Washington Insurance Company, on account of $7,491.17, of premiums originally written by the Firemen's Ins. Co., prior to Jan. 1, 1904, and included in 1906 statement by the Providence Washington Insurance Company	224 74	639 75
Balance still due		$339 56

Nothing was received during the fiscal year of 1909 but we have called the matter to the attention of the receiver several times during the past two years and have been assured that a final dividend of approximately two per cent, will be paid when certain real estate can be sold.

In re Claim of the State of Michigan v. The City Savings Bank of Detroit, Michigan.

Claim for state funds on deposit in the bank at time it became insolvent:

Amount of deposit		$75,000 00
Interest to verdict (in the case of McCoy, as State Treasurer v. Pingree, et al.)	$4,907 92	
Interest to date of Judgment.....	312 72	

Judgment was entered in May, 1903, for $80,220.64.

Pingree Div. No. 1, 2½ per cent as of June June 24, 1903, received Sept. 23, 1903....	$1,978 99
Union Trust Co., receiver, Div. No. 1, 12½ per cent received, Nov. 9, 1903.....	9,375 00
Pingree Div. No. 2, 2 789-1000 per cent received, Nov. 21, 1903.....	2,208 01
Union Trust Co., receiver, Div. No. 2, 20 per cent received, July 30, 1904.....	15,013 54
Union Trust Co., receiver, being 12½ per cent on $67.71, as of Nov. 10, 1903, received Jan. 31, 1905	8 46
Union Trust Co., receiver, Div. No. 3, 6 per cent, received May 31, 1905.....	4,504 06

Union Trust Co., receiver, Div. No. 4, received, May 25, 1906	$9,383 46	
F. S. Osborne, bankrupt, first and final dividend, received from H. P. Davock, referee in bankruptcy, Dec. 31, 1906	194 48	
Union Trust Co. receiver, Div. No. 5, received, June 10, 1908	5,254 74	
Homer McGraw, bankrupt, first and final dividend, received, Dec. 31, 1908	3,222 90	$51,143 64
Balance still due on amount of the deposit		$23,856 36

In re claim of the State of Michigan v. Chelsea Savings Bank, et al.

Claim for amount on deposit, December 2, 1907		$685,587 79
Credit:		
*March 12, 1908, by American Surety Co.	$50,000 00	
May 6, 1908, Receiver's Div. No. 1	205,745 34	
Oct. 21, 1908, Receiver's Div. No. 2	70,879 97	
April 2, 1909, Receiver's Div. No. 3	46,487 18	373,102 29
Balance still due		$312,475 29

In re Frank P. Glazier, Bankrupt. Proof of claim of the state of Michigan, for amount of the deposit in the Chelsea Savings bank at the time of its failure (See statement In re Claim of the State v. The Chelsea Savings Bank), was forwarded to the referee in bankruptcy, U. S. circuit court, for the Eastern District of Michigan, southern division, in equity, October 9, 1908.

In re Claim of the State of Michigan v. The Metropolitan Surety Co., on account of $25,000.000 bond (In re Chelsea Savings Bank.) This corporation having been dissolved, and a receiver appointed by the supreme court of the county of Albany, New York, proof of claim of the State of Michigan was forwarded to the receiver, John F. Yawger, New York City, April 3, 1909.

*The American Surety Company claims that by payment of the amount of its bond it became entitled to be subrogated to the right of the state to the extent of the payment (see in re intervening petition of American Surety Co. in Schedule "D.")

SCHEDULE "I."

Statement of amounts received as costs of suits, etc.

Charles G. Ughbanks v. Allen N. Armstrong, Warden, Michigan State Prison (see 1908 report, p. 11 for report of case) received in August, 1908	$20 00
Edwin J. Phelps, Treasurer, Mich. Asy., v. Antonio Van Haaften, (see 1908 report, p. 43 for report of case), received, in Dec. 1908	21 80
Pierre Viaus Maple Co. v. Arthur C. Bird, Dairy and Food Com'r., received in Jan., 1909.	103 00
Total	$144 80

SCHEDULE "J."

List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved, and a statement of the amount received as approval fees and paid to state treasurer.

The Retail Lumber Dealers' Mutual Insurance Association of Michigan. Articles of organization. Approved Oct. 3, 1908. Fee	$ 5 00
German Farmers Mutual Fire Insurance Company of St. Clair County. Proceedings for re-organization. Approved Sept. 10, 1908. (No fee.)	
Michigan Mutual Creamery and Cheese Factory Fire Insurance Company. Charter. Approved Nov. 11, 1908. Fee..	5 00
Michigan Co-operative Life Insurance Association, Ypsilanti, Mich. Articles of Incorporation. Approved Nov. 16, 1908. Fee	5 00
Grand Rapids Life Insurance Company. Articles of Association. Approved Dec. 15, 1908. Fee	5 00
Michigan Commercial Insurance Company of Lansing. Copy of Proceedings for Increase of Capital Stock. No fee. Approved Dec. 17, 1908.	
Preferred Casualty Company, of Boyne City, Mich. Amendments to Articles of Association changing name to "Home Casualty Company," of Detroit. Approved Jan. 12, 1909. Fee.	5 00
The Square Deal Mutual Wind Storm Insurance Company of Michigan. Articles of Incorporation. Approved Feb. 4, 1909. Fee	5 00
The Standard Accident Insurance Company. Amendment to the Articles of Incorporation. Approved Jan. 27, 1909. Fee.	5 00
Valley City Life Association, Grand Rapids. Articles of Association. Approved Jan. 28, 1909. Fee	5 00

Citizens Protective Association of Charlotte, Mich., Amendments to the Articles of Incorporation. Approved Feb. 24, 1909. Fee	$5 00
Grange Mutual Fire Insurance Company Limited, of St. Clair and Macomb Counties. Amendments to Articles of Association. Approved Feb. 20, 1909. Fee	5 00
Farmers' Mutual Fire Insurance Co., of Barry and Eaton Counties, Michigan. Amendments to Charter. Approved March 6, 1909. Fee	5 00
Michigan State Life Insurance Co., Detroit Michigan. Amendment to Articles of Association. Approved March 13, 1909. Fee	5 00
Mutual Fire Insurance Society of Michigan. Conference of the Evangelical Association Limited. Amendment to Articles of Association. Approved May 26, 1909. Fee	5 00
Michigan Casualty Company. Amendments to Articles of Association. Approved June 1, 1909. Fee	5 00
National Casualty Company. Amendment to Article of Incorporation. Approved June 3, 1909. Fee	5 00
Security Protective Association. Articles re-organizing under name of Security Casualty Company. Approved June 5, 1909. Fee	5 00
Fidelity Accident Company, of Saginaw, Mich. Articles of association. Approved June 14, 1909. Fee	5 00
Total	$85 00

SCHEDULE "K."

Summary—Statement from Schedules, D. E. G. H. I. J., of amounts collected and paid to the state through this department, also including the sum received as fees for approval of articles of association, etc., of insurance companies, for the fiscal year ending June 30, 1909.

Express company tax, (U. S. Ex. Co.) (Sch. D).....	$2,719 37
Railway tax (Wis. & Mich. Ry. Co.) (Sch. D.).....	10,000 00
Escheated estates, (Sch. E.)	1,431 32
Insane, reimbursement for support of, (Sch. G.).....	17,810 58
City Savings Bank, amount received "on account," (Sch. H)	3,222 90
Chelsea Savings Bank, amount received "on account," (Sch. H.)	117,366 95
Costs of suits, received, (Sch. I.).....	144 80
Insurance approval fees, (Sch. J.).....	85 00
Total	$152,830 92

SCHEDULE "L."

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL.

PRIMARY ELECTION LAW. Statement relative to the operation of the primary election law, Act 4, P. A. Ex. Sess. 1907.

July, 1908.

A number of opinions have recently been rendered in the Attorney General's Department which are of vital interest throughout the State, relative to the operation of the primary election law. In many instances a county convention has been held and delegates to the various district conventions and also delegates to the State convention to nominate candidates for State offices, have been selected. The Attorney General holds that such county conventions are premature and that the selection of district or State delegates thereat is absolutely void. The law provides that the State Central Committee of each political party shall fix the date of the county convention, which shall be within fifteen days after the September primary. This is mandatory, regardless of whether or not any political party in a county is operating under the primary system. Delegates to district conventions, and to a State convention to be called for the purpose of selecting candidates for State offices, must be selected at the county convention, which can not be held until subsequent to the September primary. In those instances in which delegates to district conventions have been selected at county conventions heretofore held, the Attorney General holds that the action was irregular and that the delegates must be selected at the county convention which will be held after the September primary.

The action of the Legislature in the division of the senatorial districts has presented a peculiar question. The question is—who has the right to call a senatorial district convention in those districts which have been changed by legislative act? The question was presented from the ninth senatorial district, and will undoubtedly arise in every senatorial district which has been changed. The Attorney General holds that—"If there are any members of the old senatorial district committee now residing within the new district, undoubtedly such members would have authority to act. That, regardless of whether there are at present any members of the old district committee in the new district, it might be wiser, owing to the fact that there is a new county constituting a portion of the district, for such members to meet with the county committee of the county not represented. If, however, there are no members of the old district committee now residing in the new district, or if there are such members but they refuse to act, it is suggested that the chairmen of the county committees or the county committee in each county, meet and decide upon a date and place for the convention to be called."

A number of nomination petitions have been presented in which the name of the township or city in which the petition is to be circulated has been omitted. The Attorney General holds, that the blank form of nomination petitions set forth in Section 30 of the general primary election act, requiring that the township or city, as well as the county, in which the enrolled voters who sign same reside, shall appear, is mandatory. He also holds that a nomination petition circulated in, and signed by, enrolled voters in one township or city can not be circulated in any other township or city.

A peculiar situation prevails in Muskegon county. This is one of the counties expressly exempted from the operation of the general primary election law. The latter act provides that, in those counties in which any political party has decided, under Act No. 181 of the Public Acts of 1905 or the present general primary election act, to select candidates for county offices by a direct nominating system, that delegates to the county convention shall also be selected by such political party by a direct nominating system. Provision is made for printing upon the official primary election ballot as many blank lines as there are delegates to be elected. The Attorney General holds that the requirement that blank lines upon which may be written the names of delegates to the county convention can only be printed upon the official primary election ballots prepared under authority of the general primary election law in those counties in which a political party will select its candidates for county offices under the provisions of the general primary election act. Since candidates for county offices in Muskegon county can not be selected under the provisions of the general primary election act, delegates to the Muskegon county convention can only be selected by caucus or convention system, unless there is some provision in the local primary election act authorizing the selection of such delegates by a direct voting system. The same situation undoubtedly prevails in the counties of Wayne, Kent and Alpena.

BANKING LAW. The statute does not authorize assessment of stockholders to make good an impairment of capital.

July 29, 1908.

Hon. Henry M. Zimmermann, Commissioner of Banking, "Capitol," Lansing.

Dear Sir—We have carefully examined the letter of Cashier of the Savings Bank, of date July 18, 1905, together with the enclosures accompanying same.

Section 42 of the General Banking Law, being section 6131 of the Compiled Laws of 1897, gives the Commissioner of Banking authority when he finds the capital of any bank is impaired or reduced below the amount required by law, to require such bank to make good the deficiency within ninety days after a written requisition is made, and in case the impairment is not made good it becomes his duty, with the concurrence of the Attorney General, to institute proceedings for the ap-

pointment of a Receiver to wind up the affairs of the bank. The law does not prescribe the method by which this impairment is to be made good. It makes no provision for an assessment upon the stockholders of the bank, nor is there any authority under the statutes of this state for the stockholders or directors to make such an assessment. There being no statutory authority for making the assessment, it follows that an assessment made by the stockholders or directors could not be enforced against dissenting shareholders. The only method of making an assessment against the stockholders of a bank is under section 46 of the General Banking Law, section 6135 of the Compiled Laws of 1897. This assessment can only be made when the bank is in process of liquidation.

It is our view of this statute that it contemplates a voluntary contribution on the part of the shareholders in order to prevent the affairs of the bank being liquidated by order of the Commissioner, and leaves it open to the bank to make good the deficiency in any manner that seems to it feasible. The only alternative in case of the failure of the bank to make good the deficiency is for the Commissioner to proceed as directed by the statute.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

BANKING LAW. Foreign banks have no right to engage in business in Michigan or to establish an agency or representative in this state for the transaction of business.

July 29, 1908.

Hon. Henry M. Zimmermann, Commissioner of Banking, "Capitol," Lansing:

Dear Sir—We are in receipt of yours of the 3d instant in which you enclose a letter from Reginald F. Fennell, under date of June 20, 1908, in which he submits the following inquiry:

"Is there any license necessary or other legal form required to be gone through with for banks doing business outside of the State of Michigan, to establish an agency or representative in this State? In the event of there being any restriction, kindly advise to what extent."

In reply to this inquiry will say that the Legislature has by statute prescribed strict conditions to be complied with by corporations desiring to engage in the business of banking, or in loaning and investing money. There is no statutory provision which permits foreign corporations to come into this State for the purpose of engaging in that kind of business. The fact that the Legislature has seen fit to lay down these conditions for domestic corporations desiring to engage in such business and to place them under the supervision of the state banking department indicates clearly an intention on the part of the Legislature to prohibit foreign corporations from engaging in such business.

In this connection we desire to call your attention to the case of New York Mortgage Co. v. Sec. of State, 150 Mich. 197, 202,

which was a mandamus proceeding against the Secretary of State to compel the issuance of a license to do business in this State to a corporation desiring to engage in the business of making "loans secured by mortgages on real estate, to sell such mortgages and bonds of this company secured by mortgages on real estate, but said bonds are not to be sold on the installment plan."

In response to the contention of the relator in that case that it should be admitted to do business under our foreign corporation law, the court said:

"In other words such construction would operate as to such foreign corporations as a repeal of all the beneficial and protective provisions of Act No. 205, Public Acts of 1877. To hold that such was the legislative intent would be contrary to every suggestion that arises to the mind upon the consideration of the proposition.

. . . . .Our construction of the act is that banking corporations and those corporations which are within the contemplation of our banking laws are not within the provisions of the act authorizing foreign corporations to transact business in this state."

In view of the above, we are of the opinion that foreign banks have no right to engage in business in this State, or to establish an agency or representative in this State for the transaction of business.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

OFFICES, COMPATIBILITY OF. County surveyor and county drain commissioner, incompatible offices.

July 29, 1908.

Mr. George C. Wheaton, Marshall, Michigan:

Dear Sir—Your letter of the twenty-first instant duly received, in which you ask if a person elected to the office of County Surveyor can also hold the office of County Drain Commissioner.

In reply thereto would say, this Department has held these two offices to be incompatible, and therefore could not be held by one and the same person covering the same period of time. There has been no judicial determination, however, of the question. The matter could only be tested in a proper proceeding in a court of competent jurisdiction.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION, TAXATION. FINES IN CITIES. The "uniformity clause" relative to taxation would not be violated by the adoption of the 1908 constitution (Art. X, Sec. 4) and would not affect our present inheritance tax law or prevent the enactment of a graded income tax law.

The addition of "cities" in Art. XI, Sec. 14, will operate to require all "fines" to be paid into the county treasury.

July 29, 1908.

Mr. James W. Helme, City Attorney, Adrian, Mich.:

Dear Sir—Your communication of recent date, relative to certain changes which have been made in the proposed new Constitution, is received. You refer to the language used in Article X, Section 4, and question whether the adoption of same would render inoperative our present inheritance tax law and prevent the passage of a graded income tax law, on the ground, that there would be a violation of the uniformity clause in taxation.

It is doubtful if the adoption of the proposed new Constitution would bring about any such results as those to which you refer. It is not absolutely necessary to have exact uniformity among taxpayers of different classes, if equality is maintained within the classes. In Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, the court considered an inheritance tax law which it was claimed contravened the provisions of the federal constitution. The Court, in part, said:

"There are four classes created, and manifestly there is equality between the members of each class. Inequality is only found by comparing the members of one class with those of another. * * * If there is any unsoundness it must be in the classification. The members of each class are treated alike, that is to say, all who inherit ten thousand dollars are treated alike—and all who inherit any other sum are treated alike. There is equality therefore within the classes. * * * It only requires that the law imposing it shall operate on all alike under the same circumstances." (299, 300.)

See also: Orr v. Gilman, 183 U. S. 281; Knowlton v. Moore, 178 U. S. 41; Plummer v. Coler, 178 U. S. 115; U. S. v. Perkins, 163 U. S. 625.

The accepted rule of construction only requires that all within a class be treated alike, and does not attempt to require that separate and distinct classes be treated similarly.

You also refer to Section 14, Article XI, of the proposed new Constitution, relative to education, and ask whether the addition of the word "cities" will operate to require the fines collected in cities to be turned into the library fund for the city, instead of being turned into the county treasury.

It is understood that, under the present Constitution, fines assessed in cities for any breach of the penal laws, are paid into the county treasury for library purposes. (Wayne Co. v. City of Detroit, 17 Mich. 400.)

The addition of the word "cities," in the proposed new Constitution

will serve to make clear a provision in regard to which there was at one time some doubt. It is evident that if the proposed new Constitution is adopted, all such fines as those to which you refer will have to be paid into the county treasury for the purposes indicated in the proposed new Constitution.

Very respectfully,
JNO. E. BIRD,
Attorney General.

PRIMARY ELECTION LAW. Right of board of election commissioners to prepare ballots for a political party, providing no person has filed sufficient petitions to have his name certified for printing upon such ballots.

July 30, 1908.

Hon. George A. Prescott, Secretary of State, "Capitol," Lansing:

Dear Sir—I have your communication of July second, relative to the General Primary Election Law. You refer to Sections 18 and 36 of said law, and ask to be advised:

"Whether the Board of Election Commissioners should prepare ballots for a political party, providing no person has filed sufficient petitions in order to have his name certified for printing upon such ballots."

Replying thereto would say, Section 18 of said Act provides, in part, that:

"A general primary election, for all political parties, shall be held in every election precinct in this State on the first Tuesday in September preceding every general November election, at which time the enrolled voters of each political party shall vote for party candidates for the offices of Governor, Lieutenant Governor, etc."

Section 20 of said Act provides, in part, that:

"It shall be the duty of the board of election commissioners of each county in this State to prepare and furnish the necessary official primary election ballots which may be required for use by any political party at the September primary."

Said section also designates the color of the paper to be used for certain political parties, and provides that:

"If there are other political parties, the board of election commissioners shall print ballots therefor in black ink upon a good quality of different colored paper from that as above designated."

It is also provided in said section, that ballots other than those furnished by the Board of Election Commissioners shall not be used, cast or counted.

The statute, therefore, plainly requires a primary election for all political parties to be held on the first Tuesday in September preceding the November election, at which time the enrolled voters of each political party *shall* vote for party candidates for Governor, Lieutenant Governor, etc. Party candidates can be voted for only upon official primary election ballots. The enrolled voters of the various political parties must be

afforded, and possess the right to vote, for party candidates for Governor and Lieutenant Governor at the time above indicated. The fact that no member of a political party has taken steps to entitle him to have his name printed upon the official primary election ballot, as a party candidate, is in nowise controlling. The enrolled voters of the various political parties possess the right to vote for party candidates, regardless of whether there are any names printed upon the official primary election ballot. If there are no names certified to the Board to be printed upon the ballots, they can be prepared by leaving a blank space thereon where the name of the candidate would naturally appear. It is the absolute duty of the Board of Election Commissioners, under authority of Section 20 of the General Primary Election Act, to prepare and furnish the official primary election ballots, which may be required by the enrolled voters of any political party. This will include any and all such political parties as have candidates for Governor and Lieutenant Governor, which fact will be certified to the respective Boards of Election Commissioners by the Secretary of State, and each political party which had an impression of its vignette on file in the office of the Secretary of State for the last November election under authority of Section 3623 of the Compiled Laws of 1897.

Very respectfully,
JNO. E. BIRD,
Attorney General.

STATE SENATE. Eligibility of state representative and prosecuting attorney for election to the state senate. Under Sec. 6, Art. 1V of the constitution, the prosecuting attorney should resign from office but there is nothing in the constitution to indicate that a representative is ineligible.

July 30, 1908.

Hon. Samuel H. Kelley, Benton Harbor, Michigan:

Dear Sir—I have your communication of July eighth, containing inquiries bearing upon the eligibility of yourself and Charles E. White for election to the State Senate. You state that Mr. White is now Prosecuting Attorney and that his term expires December 31st, 1908; that you are a Representative in the State Legislature for the term ending December 31st, 1908. You ask if either yourself or Mr. White are eligible to the office of State Senator, without resigning from the office now held by you, prior to election.

Relative to the eligibility of Mr. White for the office in question, Section 6 of Article IV of the Constitution reads as follows:

"No person holding any office under the United States or any county office except notaries public, officers of the militia and officers elected by townships, shall be eligible to or have a seat in either House of the Legislature, and all votes given for any such person shall be void."

In an opinion rendered under date of November 24th, 1906, we held that the so-called election of a person as Representative in the State

Legislature, who, at the time of his election was holding the office of Sheriff, was absolutely void. A person holding the office of Prosecuting Attorney must be governed by the same rule as a person holding the office of Sheriff, as each is a county officer within the meaning of the above constitutional provision. It will be observed, however, that the prohibition operates only against a person "holding any office," etc. Therefore, a person who had been elected to a county office and who resigns prior to the date on which a State Senator is elected, would be eligible to election to said office.

The eligibility of a Member of the House of Representatives to the State Senate, presents a different question. The office of Representative in the State Legislature does not fall within the above quoted provision of the Constitution. This provision of the Constitution is the only one to which my attention has been challenged that could possibly be said to make you ineligible to the office of State Senator, owing to the fact that you are now holding the office of Representative in the State Legislature.

It is my opinion that you are not ineligible to the office of State Senator, by reason of the fact that you are holding the office of Representative in the State Legislature.

Very respectfully,

JNO. E. BIRD,

Attorney General.

TAX LAW—DEPOSITS OF INSURANCE COMPANY IN OTHER STATES. Deposits of securities of Michigan Insurance Companies in other states are not exempt from taxation, unless they are government bonds, or otherwise exempt from taxation in Michigan.

July 30, 1908.

Hon. James V. Barry, Commissioner of Insurance, "Capitol," Lansing, Michigan:

Dear Sir—I am in receipt of yours of the 28th ultimo in which you submit certain correspondence relative to the taxation by this state of deposits of insurance companies organized under the laws of this state in other states. You state that one company is required by the laws of Virginia to maintain a deposit of twenty-five thousand dollars ($25,000.00) in securities, and also to make a deposit of fifty thousand dollars ($50,000.00) in securities in the state of Ohio, and you desire an opinion as to whether these deposits of securities are taxable under the laws of this state.

Act 235 of the Public Acts of 1903 provides:

"All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. . . . In computing the taxable property of insurance companies organized under the laws of this state, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities, as determined and shown by the

last report of the Commissioner of Insurance, including in such liabilities the legal reserve required by the laws of this state, or the regulations of the Insurance Department and the remainder shall be the personal property for which the company shall be assessed."

There is no question but that these deposits made in the states of Ohio and Virginia are assets of the company. If they are government bonds, they are, of course, exempt from taxation; otherwise they should be included as assets in determining the value of the taxable personal property of the corporation.

See Detroit Fire & Marine Ins. Co. v. Hartz, 132 Mich. 518.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

FOREIGN CORPORATIONS. Secretary of State should revoke certificate of authority of foreign corporation which has not filed annual report.

July 30, 1908.

Hon. George A. Prescott, Secretary of State, "Capitol," Lansing, Mich.:

Dear Sir—I am in receipt of your letter of the 26th ultimo in which you submit a list of the foreign corporations admitted to do business in this state which have failed to file an annual report for the year 1907 as required by law, and request the opinion of this Department as to what further action should be taken by you.

Section 4 of Act 310 of the Public Acts of 1907, which amends Act 206, Public Acts of 1901, as amended by Act 34, Public Acts of 1903, provides:

"That no such foreign corporation shall be permitted to transact business in this State unless it be incorporated in whole, or in part, for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the Secretary of State shall in the certificate which he issues state under what act such corporation is to carry on business in this State, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act: Provided further, That the carrying on in this State by such corporation, of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been so admitted, shall be sufficient cause for revoking the certificate of authority to do business in this State, and the Secretary of State may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation."

The filing of an annual report is one of the requirements of Act 232, Public Acts of 1903, and amendments thereto, under the terms of which all of these corporations are permitted to do business in this state.

It is my opinion that you should forthwith revoke the certificate of authority of each of these corporations, giving them notice of such revocation by registered mail as directed by statute, which notice should specify particularly your reasons for revoking the certificate of authority.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW. Payment of printer's fees for publication of judgment of dissolution against a corporation may be taxed as costs against the defendant.

It is mandatory upon the secretary of state to publish notice of judgment of dissolution, whether fees are paid or not.

July 30, 1908.

Hon. George A. Prescott, Secretary of State, "Capitol," Lansing, Michigan:

Dear Sir—I am in receipt of your letter of the 17th instant in which you state that a copy of a judgment of dissolution rendered against a corporation on the complaint of the People of the State of Michigan has been forwarded to you with the request that it be published in accordance with section 9964 of the Compiled Laws of 1897, and request the opinion of the Department as to whether this publication should be made without any provision for paying the printer's fees, and further as to the duty of the Secretary of State in regard thereto.

Section 9964 of the Compiled Laws of 1897 provides:

"Whenever any such judgment shall be rendered against a corporation, a copy of the record of such judgment shall be forthwith filed in the office of the Secretary of State; and such Secretary shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper published at the seat of government, and in a newspaper printed in the county where the principal office or place of business of such corporation shall be, if a newspaper be there printed."

This statute makes it mandatory upon the Secretary of State to publish the substance and effect of the judgment and makes no mention of the method of paying the cost of publication. It is my opinion that the fact that no provision is made for the cost of publication would not warrant the Secretary of State in refusing to make the publication as required by the statute.

The judgment does not state whether costs are to follow and in that case costs follow against the defendants as of course. It is our opinion that the expense of publication at the legal rate could be included as a part of the taxable costs against the defendant.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CORONERS INQUEST. Expense of, upon body of criminal transferred to state asylum should be paid as though he were actually serving sentence at prison.

July 30, 1908.

Board of State Auditors, "Capitol," Lansing, Michigan:

Gentlemen—We have examined the bill of Henry C. Clark for holding inquest over the body of W. Wesley Morris, who died in the State Asylum at Ionia, March 17, 1908, together with the statement of facts attached thereto.

It appears that Morris was transferred from the Detroit House of Correction to the State Asylum, and that he died at the Asylum before the expiration of his sentence at the House of Correction.

The proviso of Section 11828 of the Compiled Laws reads as follows:

"Provided, That when an inquest is held on the body of any person who dies in either of the prisons or public reformatories of this state, the expense of such inquest shall be audited and paid by the state, as other charges against the state are audited and paid."

Section 1982 of the Compiled Laws of 1897 makes it necessary for the medical superintendent to make application to the Judge of Probate within five days after the expiration of the patient's sentence, for an order to retain such person in the Asylum in case the insanity continues after the expiration of the original sentence. The same section also provides that the convict shall be returned to the penal institution from whence he came if he is restored to reason prior to the expiration of his sentence. It seems to follow from the provisions of section 1982 that a person who becomes insane while serving a sentence for crime, and is for that reason transferred to the State Asylum, is, in fact, continuing to serve his sentence while in the Asylum, and that the State Asylum is but a branch or ward of the penal institution to which the prisoner was originally committed for the purpose of properly caring for him during the continuation of his insanity. To that extent the State Asylum is a public reformatory within the meaning of section 11828, and bills for holding coroners' inquest over patients who died there before the expiration of their original sentence, could properly be allowed by your board.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

COUNTY TREASURER. CONSTITUTION. Appointed to fill vacancy of six months and afterward elected for term of two years, is eligible to election for a period of one year and six months.

July 30, 1908.

Mr. Henry D. Hager, Mio, Michigan:

Dear Sir—I am in receipt of your communication in which you state that on July 1st, 1906, you assumed the office of County Treasurer of

Oscoda county, by appointment of the Board of Supervisors, to fill vacancy; that at the next regular election you were elected to said office for the term of two years. You desire to know if you are eligible to another term.

In order to answer these questions, it is necessary that we ascertain whether or not the period which you served as County Treasurer, by virtue of the appointment of the Board of Supervisors, must be included against you in the four years you are permitted to serve under Section 2534 of the Compiled Laws of 1897. This section provides, in part:

The county treasurer * * * shall be incapable of holding the office of county treasurer longer than four in any period of six years."

Section 2702 of the Compiled Laws of 1897, relative to the office of Village Treasurer, provides that:

"No person shall be eligible to the office of treasurer for more than two successive terms."

Former Attorney General, Charles A. Blair, has held that this provision prohibits a man who was appointed to fill a vacancy in the office of Village Treasurer, and subsequently elected for a full term, from being re-elected to said office, for the reason, that that period which he served as Village Treasurer, by virtue of the appointment, must, under the statute, be considered as constituting a term.

If the statute relative to the office of County Treasurer did prohibit a person from holding the office more than two terms in succession, the opinion of former Attorney General Blair would apply, and you would be ineligible to re-election.

That there is a distinction between a statute which prohibits a person from holding the office more than two terms, and one which prohibits the holding of an office more than four years, is evident. (Horton v. Watson, 23 Kan. 233.)

However, I believe that the period that you served under the appointment was as much a holding of the office of County Treasurer as it would have been if you had been elected to the office instead of appointed. I am, therefore, of the opinion that that period which you served as County Treasurer, by virtue of the appointment of the Board of Supervisors, must be included in the four years which the statute places as the limit upon any person holding the office of County Treasurer in any period of six years. You are, therefore, ineligible to election for the full term of two years, at the coming November election.

The question still remains, may you be elected for the remainder of the four years, namely, a year and a half.

Unless Section 3 of Article X, of the Constitution, or Section 2534 of the Compiled Laws, prohibits it, you may. These sections, respectively, provide:

"In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, chosen by the electors thereof, once in two years, and as often as vacancies shall happen, whose duties and powers shall be prescribed by law. * * *."

"The county treasurer shall be elected at the general election for

the term of two years, and shall be incapable of holding the office of county treasurer longer than four in any period of six years. * * *."

I do not believe that there is any prohibition contained in Section 2534, for the reason, that the Legislature, as well as providing that the County Treasurer shall be elected for a term of two years, has given, by the same section, the right to each County Treasurer to hold the office for a period of four years. This section must be so construed as to maintain this right. In order to do this in your case, it is necessary that we hold you are eligible to election, even though the period which you may serve is shorter than the term prescribed by statute. This brings us to the constitutional question.

While I am of the opinion that the framers of the Constitution intended, by Section 3 of Article X, that the County Treasurer should be elected for a period of two years, still, the decisions which I have been able to find relative to the question before me, hold to the view that a person is eligible to election, even though he may not be eligible to serve the full legal term.

"The term eligible means, not only eligible to be elected to the office, but also eligible to hold it after election; and an officer may be eligible at the time of his election, and for a period afterwards, yet not be eligible to hold the office during its entire legal term." (Jefferies v. Rowe, 63 Ind. 897.)

"The fact that the effect of this construction will be to terminate the holding of a portion of the first occupants, under the new constitution, in the middle of a term, I do not think is entitled to much weight. It produces no greater inconvenience than death, removal, or resignation is frequently doing, and is as well provided for as such cases are. Suppose the constitution rendered a person ineligible to hold an office after he had arrived at a certain age, say sixty years, he might be elected at fifty-nine and serve a year, and then be compelled to vacate his office." (Carson v. Mc Phetridge, 15 Kan. 331.)

"The constitution of course does not mean that the county treasurer may hold the office for four years, for if it did, then Watson might have held said office not only during said intermediate space of time, but also for nearly nine months of said third term. The constitution says two 'terms,' not four years, and that the treasurer shall not hold the office 'for more than two consecutive terms.'" (Horton v. Watson, 23 Kan. 233.)

Cited with approval in Davis v. Patton, 41 Kan. 480.

I am, therefore, of the opinion that you are eligible to election for the office of County Treasurer at the coming November election, for a period of one year and six months.

Respectfully yours,

JNO. E. BIRD,

Attorney General.

HIGHWAY LAW. CONSTITUTION. It is the duty of commissioners to hire the overseers to do road work, except where there may be more than the overseers can perform.

July 30, 1908.

Hon. Horatio S. Earle, State Highway Commissioner, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the twenty-ninth of May, in which you refer us to Section 13 of Act No. 108 of the Public Acts of 1907. You state that your attention has recently been called to the fact that several of the Highway Commissioners have ignored the Overseers and refused to give them work to do, going outside and hiring others to attend to this work. You desire to be informed as to whether the Commissioner has the legal right to carry on the work in this way.

In reply thereto would say that Section 13 of Act No. 197 of the Public Acts of 1907, provides, in part:

"There shall be elected in each organized township one overseer of highways for each road district, who shall be elected in the same manner as highway commissioners and other township officers are elected and who shall work under the direction of the township highway commissioner."

Section 1 of Article XI of the Constitution provides:

"There shall be elected annually, on the first Monday of April, in each organized township, * * * one commissioner of highways, * * * and one overseer of highways for each highway district, whose powers and duties shall be prescribed by law."

In Hubbard v. Township Board, 25 Mich. 153, our Supreme Court said:

"The powers of highway commissioners and overseers are subject to legislative modification, but no legislation can abolish the offices or take away all their functions."

If Act 108 or 197 were subject to the construction that it was optional with the highway commissioner as to whether or not the overseer should perform any of the road duties prescribed by the acts, we would lean to the opinion that the Legislature had violated the above section of the Constitution. The Legislature could not constitutionally pass an act that would do away with all the functions of the overseer. This act must be construed so as to uphold its constitutionality if possible. With this end in view, we are of the opinion that the highway commissioner is only at liberty to hire help when the amount of work on hand is greater than can be performed by the overseer.

Respectfully yours,

JNO. E. BIRD,

Attorney General.

HIGHWAY LAW. Townships are not authorized by law to enter into contracts in competition with private contractors to perform a contract and build a road for the county road commissioners.

July 30, 1908.

Hon. Horatio S. Earle, State Highway Commissioner, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the eighth ultimo, in which you wrote from a letter received by Mr. John Tait, Clerk of Luce county, as follows:

"By request of the County Road Commissioners, I am writing you to be advised as to the letting of a mile of county road now partly finished, the C. R. Com'rs advertise for bids and the township of McMillan put in a bid and it being the lowest bid, the contract was awarded to the township. On going to the Prosecuting Attorney to have a contract drawn up he informed the County Road Commissioners that the township could not take a contract, for a larger sum than $500. Will you please advise as to whether the township can go ahead and take this contract. The amount of the consideration is $1,450."

As we understand the above proposition, the township of McMillan filed a bid with the County Road Commissioners in competition with private contractors, and that, it being the lowest bidder, the contract was awarded to it the same as it would have been awarded to any of the private contractors if one of them had been the lowest bidder. In other words, the township has undertaken to perform a contract and build a road thereunder for the County Road Commissioners.

Townships only possess such powers as are given them by the Legislature and it is necessary that a law exists authorizing the township to enter into such contracts, before the township can legally do so. We have not been able to find any such law.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

WITNESS AS TO THE RESIDENCE OF AN ALIEN. The court has the right to refuse to hear witness or to disregard what the witness may state as to the alien.

August 12, 1908.

Mr. Claus Hanson, Iron Mountain, Michigan:

My dear Sir—I am in receipt of yours of August 3d advising me that you were challenged in Judge Stone's court by the Clerk when you offered yourself as a witness as to the residence of an alien.

When an alien offers himself for admission, he must satisfy the mind of the court on the question of the length of his residence in this country. The court could admit you to testify upon this question or not as he saw fit, and if he chose to prevent you testifying there is no legal

redress for you. The alien is obliged to prove to the satisfaction of the court also that "he has behaved as a man of good moral character." If someone offers himself as a witness upon that question and the court is satisfied that the witness' standard of what is a good moral character is not such as it ought to be, he has a right to refuse to hear him, and if he does hear him, he has a right to disregard what he says.

From your standpoint I can well see it must have been very embarrasing to you, but under the circumstances I know of nothing you can do.

Very truly yours,
JNO. E. BIRD,
Attorney General.

DRAIN LAW. SPECIAL JURIES IN DRAIN PROCEEDINGS. Special juries are governed by Sec. 4392 C. L. 1897.

DRAIN LAW. FEES OF JUDGES. Judges of Probate not entitled to fees for certified copies of citation.

August 14, 1908.

Hon. John M. Smith, Judge of Probate, Caro, Michigan.

Dear Sir—We are in receipt of your letter of the 6th instant in which you submit the following inquiries:

1st. Does Act 236, Public Acts of 1907, apply to juries in drain proceedings?

2nd. Is the Judge of Probate authorized to make copies of the citation required by section 4323 of the Compiled Laws of 1897 for the purpose of service on the owners of land traversed by the drain who have not released the right of way, and make a legal charge of ten cents per folio for preparing these copies?

In reply to your first inquiry will say that Act 236 of the Public Acts of 1907 applies to grand and petit juries. The juries provided for in drain proceedings are special juries, and it is the opinion of this Department that they do not come within the provisions of Act 236 of the Public Acts of 1907, but are governed by section 4392 of the Compiled Laws of 1897.

In reply to your second inquiry will say that the duty of the Probate Judge under section 4323 of the Compiled Laws ends with issuing the original citation. The law does not make it necessary to serve a certified copy of the citation, and it is our opinion that the officer who serves the citation should make such copies as are necessary in like manner as copies of summons in justice and Circuit Court are made. We are, therefore, of the opinion that you would not be entitled to make a charge to the county drain commissioner for certified copies of citations to be used for service on resident owners whose lands are traversed by a drain and who have not released the right of way.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW. Foreign trust companies cannot be authorized to carry on business in Michigan. A single transaction is not carrying on business.

August 19, 1908.

Mr. H. F. Dunham, Consulting Engineer, 220 Broadway, N. Y.

Dear Sir—We are in receipt of yours of the 28th ultimo in which you inquire whether Act 310 of the Public Acts of 1907, relating to the admission of foreign corporations to do business in this state, would include an established Eastern Trust Company which holds a mortgage upon a public utilities plant as trustee and pays the semi-annual coupons.

In reply thereto will say that it is the opinion of this department that foreign trust companies cannot be admitted to do business in this state under our statutes. We have a statute providing for the organization of domestic trust companies and placing their business under the supervision of the Banking Department. The Supreme Court of this state, in a recent case, said:

"Our construction of the act (relating to admission of foreign corporations to do business in this state) is that banking corporations and those corporations which are within the contemplation of our banking laws are not within the provisions authorizing foreign corporations to transact business in this state."

New York Mortgage Co. v. Sec. of State, 150 Mich. 197, 203.

However, your letter seems to indicate that it is not the purpose of this trust company to establish an office in this state and engage in general business here, but that its business here will be simply the taking and holding as trustee of a mortgage upon one plant. By the clear weight of authority the courts have held that a single transaction such as is contemplated by this trust company is not carrying on business in the state within the meaning of our foreign corporation laws, and if the business proposed by this trust company is limited as your letter indicates, we do not see any legal objection to its entering into the transaction as contemplated.

In this connection we call your attention to the case of

Cooper Mfg. Co. v. Ferguson, 113 U. S., 727, and Note to 24 L. R. A. 298.

Very respectfully yours,

JNO. E. BIRD,

Attorney General.

TOWNSHIP TREASURER—OFFICIAL BONDS. Official bonds of township treasurers should contain the statutory conditions.

August 19, 1908.

Hon. George A. Prescott, Secretary of State, Capitol, Lansing:

Dear Sir—The attention of this Department has been brought to the fact that many of the bonds furnished by township officers are being furnished by surety companies. We have also noted that many of these surety companies are insisting that the bonds which they furnish shall contain a clause relieving them from liability in case of the failure of depositories in which public funds are kept. In the case of township treasurer, the statute makes the treasurer an insurer of the public funds coming into his hands, and any bond which does not secure against the failure of depositories of public funds is not in compliance with the law and should be refused by the officers intrusted with the duty of approving such bond.

Act 29, Public Acts of 1903, requires that the township treasurer shall give a bond "conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over, according to law, all moneys which shall come into his hands as such treasurer." No township board has a right to approve a bond containing a condition materially different from that required by the statute above quoted whether the same be executed by a surety company or private individual. The bond given by the township treasurer to the county treasurer under the provisions of Act 28, Public Acts of 1903, should be conditioned "that he will pay over to the county treasurer as required by law, all state and county taxes which he shall collect during his term of office and duly and faithfully perform all the other duties of his office."

We call your attention to these provisions of the statute in order that notice may be sent to the various township boards so that they may understand clearly the provisions of the statute and be able to determine whether or not the bonds offered to them for approval are in compliance with the law. Experience has shown that the loss of public funds occurs more frequently by reason of the failure of depositories than on account of any delinquency on the part of public officers, and officials should see to it that the bonds furnished them for the protection of public funds are strictly in accordance with the statute and do not contain any clauses releasing the sureties from any liability to which the officer himself is subjected under the law.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

DRAIN LAW—FEES OF JUDGE OF PROBATE. Judge of Probate not entitled to fees for certified copies of application for appointment, citation, proofs of publication, affidavit of objections, stipulation for discontinuance or order of discontinuance. Entitled to $2 for certified copy of order appointing special commissioner.

August 19, 1908.

Mr. James D. Brooker, Prosecuting Attorney, Caro, Michigan:

Dear Sir—We are in receipt of yours of the 10th instant in which you submit the itemized bill of John M. Smith, Judge of Probate, for fees in the matter of the White Creek Drain, and request the opinion of this Department as to the legality of the charges therein contained.

The principal part of this bill is for making exemplified copies of papers on file in the Probate Court relative to the appointment of the special commissioners. It includes certified copies of the application for the appointment of special commissioners, order of hearing on application, proof of service on railroad company with order of adjournment attached, citation, to non-resident owners for publication with proof of publication, citation to resident owner with proof of service by leaving copy and proof of personal service, order appointing special commissioners, order appointing time and place of meeting of special commissioners, affidavit of objections, stipulation for discontinuance, order of discontinuance and order of adjournment.

Section 4326 of the Compiled Laws of 1897, Section 19 of the 1908 compilation of the Drain Laws, provides that the Probate Court shall "deliver to the county drain commissioner a copy of the order appointing the special commissioners."

Section 4392 of the Compiled Laws of 1897, Section 86 of the Drain Laws, provides that the Judge of Probate shall receive "two dollars for the appointment of special commissioners including the certified copy of the order of their appointment." This section would preclude the Judge of Probate from charging more than two dollars for the certified copy of the order appointing the special commissioners. The bill makes a charge for 280½ folios at ten cents per folio for this item.

As to the other items your attention is called to the provisions of 4327 of the Compiled Laws of 1897, Section 20 of the Drain Laws, which provides:

"There shall be produced by the county drain commissioner at such hearing, the *original* application for the laying out of such drain, and the minutes of his action thereon, so far as had, also the first order of determination and the application to the probate court, with the citation annexed, and a *copy* of all the proceedings in the probate court, the original minutes of the survey, signed by the surveyor and the order appointing the jury or special commissioners as the case may be."

This provision prescribes what papers shall be produced before the special commissioners. It will be noted that it is the original application to the Probate Court with the citation annexed which is required to be produced. It follows, therefore, that no legal charge could be made for certified copies of the application for appointment and the

citations. As to the proofs of service and proofs of publication for which charge is made in the hill, we find no statute which requires copies of these to be produced before the special commissioners, and there being no statute requiring the production of these copies, the bill for making certified copies of these papers should not be allowed as a charge against the drain.

The section requires "a copy of all the proceedings in the Probate Court" to be produced. Read in connection with the rest of this provision it is clear that the requirement is not that a copy of all the papers on file shall be produced for the reason that provision is made for producing "the application to the Probate Court with the citation annexed," and also for producing "the order appointing the jury or special commissioners." We, therefore, conclude that all that is included in the expression "a copy of all the proceedings in the Probate Court" is a copy of the orders of adjournment from time to time pending the appointment of the special commissioners and copies of any other orders made by the court pending such appointment, and for which provision has not been made elsewhere. We note that the bill includes two items for "order of adjournment." If these items are for adjournments of the hearing on the appointment of the special commissioners, it is possible that they may properly be allowed. We are unable to find any provision which would permit the allowance of the claim for copies of "affidavit of objections," "stipulation for discontinuance" and "order of discontinuance." We note also a charge of three dollars for making order. The statutory fee of three dollars prescribed by section 4392, C. L., Section 86 of the Drain Laws, applies only in case of proceedings before a jury, which proceedings were not had in this case.

The above conclusions leave but three items of Judge Smith's bill which could by any construction be made a charge against the White Creek Drain, viz., the two orders of adjournment and the order fixing time and place of meeting of special commissioners. We are at a loss to understand why it was necessary to include, as a part of the order fixing the time and place of the meeting of the special commissioners, the minutes of the survey for this drain at an expense of $18.70 to be charged as a part of its cost. The balance of the bill is not in our judgment a proper charge against the White Creek Drain.

We have not discussed in this opinion the question of the right of the Judge of Probate to charge for certified copies of papers which the law requires him to make in the general course of the administration of his office. We think it is extremely doubtful whether a public officer receiving a salary such as paid the Judge of Probate would be entitled under the provisions of Section 4392, Compiled Laws, Section 86 of the Drain Laws, to fees for making exemplified copies of papers which the statute directs him to prepare in the general course of the administration of his office.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

SCHOOL BONDS—BONDS OF SCHOOL TREASURER. Forms for conditions of school treasurers bonds under the different statutes.

August 19, 1908.

Hon. L. L. Wright, Superintendent of Public Instruction, "Capitol," Lansing, Michigan:

Dear Sir—This Department has had brought to its attention the fact that many of the bonds furnished by district treasurers are insufficient to protect the public moneys officially intrusted to their care. Bonds executed by surety companies are being furnished quite universally and it has come to the notice of this Department that many of these surety companies are offering, if not insisting upon the use of, bonds which relieve them from liability in case of the failure of depositories in which the district's funds are kept. In the majority of cases the loss of public moneys is occasioned by the failure of such depositories rather than by any delinquency on the part of the official intrusted with public funds, and the Department deems it important to call your attention to the matter at this time and suggest forms of bonds under the various school laws which will furnish ample protection to district moneys.

In the case of a primary school district, we suggest the following condition for the treasurer's bond:

"Now, therefore, the condition of this obligation is such that if the above bounden A. B. shall faithfully apply all moneys that shall come into his hands by virtue of his office as treasurer of District No....., of the township of....., county of..... and State of Michigan, and shall perform all the duties of the office of district treasurer as required by the provisions of Act 164, Public Acts of 1881, and the amendments thereto which have heretofore been adopted, or which may hereafter be adopted, and at the close of his term of office shall settle with the district board and deliver to his successor in office all books, vouchers, orders, documents and papers belonging to the office of district treasurer, together with all district moneys remaining on hand, then this obligation shall be void; otherwise it shall remain in full force and effect."

It will be noted that subdivision 1 of section 69 of the General School Laws lays down certain conditions under which the school board may designate a depository for school funds and the treasurer be thereby relieved from responsibility for the funds while so deposited. This clause applies only where the amount in coming into the hands of the treasurer exceeds $3,000, and lays down explicitly the condition under which the deposits may be made. It will be seen, therefore, that a general clause relieving the surety from liability for the failure of a depository would not furnish the protection to the district's funds which is contemplated by the statute.

In the case of graded school districts the statute does not prescribe the form of bond, but leaves it to the Board of Education to approve both as to form and sureties. No Board of Education should accept a bond in which there is a clause relieving the surety from liability by failure of any depository in which the school funds are placed. We

suggest the following form for the condition of the bond to be given by the treasurer of the Board of Education of a graded school district as amply protecting the district funds:

"Now, therefore, the condition of this obligation is such that if the above bounden C. D. shall faithfully perform all the duties pertaining to the office of treasurer of the Board of Education of District No...., of the.....of....., county of..... and State of Michigan; shall account for all moneys coming into his hands as such treasurer, and at the end of his term shall turn over to his successor in office all books, vouchers, orders, documents and papers, together with all district moneys not disbursed by him in accordance with law, then this obligation shall be void; otherwise it shall remain in full force and effect."

In the case of districts organized under Act 176, Public Acts of 1891, providing for the organization of township school districts in the Upper Peninsula, the condition of the bond may be as follows:

"Now, therefore, the condition of this obligation is such that if the above bounden C. D. shall faithfully perform all the duties pertaining to the office of treasurer of the Board of Education of the township of ....., county of..... and State of Michigan as prescribed by Act 176, Public Acts of 1891, and the amendments thereto which have heretofore been adopted, or which may hereafter be adopted; and shall account for all moneys coming into his hands as such treasurer, and at the end of his term shall turn over to his successor in office all books, vouchers, orders, documents and papers, together with all district moneys not disbursed by him in accordance with law, then this obligation shall be void; otherwise it shall remain in full force and effect."

We suggest that you communicate with the various school boards of the state calling their attention to the fact that bonds relieving the treasurer from liability for the failure of depositories of district funds do not properly protect the district, and in the case of primary school districts are not in compliance with the statute.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

PRIMARY ELECTION. Voters must be registered.

(Telegram.)

August 31, 1908.

Mr. Merlin Wiley, Secretary Republican County Committee, Sault Ste. Marie, Michigan:

Voter must be registered, to be a qualified elector. Every voter must be registered in precinct where he wishes to be enrolled or vote, except those indicated in Section twelve. The fact that voter would be qualified to register upon a registration day not sufficient.

JNO. E. BIRD,
Attorney General.

SCHOOL LAWS. Rural high school, under act 144, P. A. 1901, sufficiency of petition must be determined by tax list of the township at the time petition is presented. Person having use of property is not a "taxpayer" within the statute even though he pays taxes on the property used.

September 4, 1908.

Mrs. F. M. Aldrich, R. F. D. No. 54, Alto, Mich.

Dear Madam—I am in receipt of your communication, in which you state that a petition for a rural high shool, according to Act No. 144 of the Public Acts of 1901, was circulated last spring; that you secured the required number of signatures thereto according to the tax list furnished you by the township treasurer, but, by the time your petition was filed with the clerk, a new tax roll had been accepted by the board of review, which roll contained a greater number of taxpayers than the previous roll. You inquire:

1st. If you are to go by the new roll, or last year's roll.

2nd. If, when there is property assessed as an estate, the person having the use thereof and paying the taxes thereon, has a right to sign a petition.

3rd. If not, can said estate be counted on the roll against said petition, or should it be cancelled by both sides.

In reply thereto would say:

First, That Section 1 of Act No. 144 of the Public Acts of 1901 provides:

"The township board of any township, not having within its limits an incorporated village or city, upon the petition of not less than one-third of the taxpayers of such township for the establishment of a rural high school, shall submit such question to a vote of the qualified electors of said township at a special election called for that purpose within sixty days from date of receipt of said petition."

We are of the opinion that the township board must determine the sufficiency of the petition by the tax list of the township at the time the petition is presented to the township.

Second, The Supreme Court of Missouri, in State ex rel. Sutton v. Fasse, 71 S. W. 745, said: "A 'taxpayer' is a person owning property in the State subject to taxation on which he regularly pays taxes." The Supreme Court of Kentucky, in Tate v. Earlanger School District No. 32-49 S. W. 337, said: " 'Taxpayer,' as used in Kentucky Statutes Section 4464, requiring that the petition to take the sense of voters upon a proposition to vote a tax for a graded school must be signed by at least ten legal voters who are taxpayers, means persons who pay taxes in their own name on property in their own name, and does not include persons whose wives may pay taxes."

Under these decisions, we are of the opinion that "taxpayers," as used in the section above quoted, would not include a person who has the use of land and who pays taxes thereon.

Third, We know of no reason or authority for excluding from the tax

list, in the determination of the sufficiency of the petition for a high school, any property included upon said list.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

PROSECUTING ATTORNEY—COUNTY OFFICERS—CONSTITUTION. Question whether a person who is not a resident of the county may be elected to and hold the office of prosecuting attorney.

September 4, 1908.

Mr. J. A. Hamilton, Allouez, Michigan:

Dear Sir—I have your communication of August tenth, which reads, in part, as follows:

"Can a political party legally nominate a man who is not a resident of the county for the office of Prosecuting Attorney, so long as there is another man in the county qualified for the position, even though he belongs to a different party?"

In reply thereto would say, your communication raises the question—whether or not a person who is not a resident of your county may be elected to and hold the office of Prosecuting Attorney in your county.

Section 3 of Article X, of the Constitution, reads, in part, as follows:

"In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, chosen by the electors thereof, once in two years, and as often as vacancies shall happen, whose duties and powers shall be prescribed by law."

The foregoing is the only provision in our Constitution which has any bearing upon this subject. Strange as it may seem, there is no express provision of law requiring that a person must be a resident and elector of the county as a condition precedent to his right to be elected to the office of Prosecuting Attorney. There is good reason for holding, however, that a person must be a resident and elector of the county in which he desires to hold the office.

The rule which seems to be controlling is set forth by Throop on Public Officers, pages 81 and 82, as follows:

"It may also be laid down as a general principle, founded in the nature of representative government, which presupposes the electors, except in particular instances, to elect from among themselves, that no person can be elected to any office who is not himself possessed of the requisite qualifications for an elector; and . . . . whatever other and different qualifications or disqualifications may be specified, every person who is voted for . . . . must, at all events, possess the qualifications, and be free from the disqualifications which attach to the character of an elector."

It is also said that:

"Where no limitations are prescribed, however, the right to hold a

public office under our political system is an implied attribute of citizenship, those and those only who are competent to participate in choosing officers being in general deemed eligible to be chosen." (Mechem on Public Officers, Sec. 67.)

It is unquestionably the rule in this State, that electors only are eligible to office.

In Attorney General v. Abbott, 121 Mich. 540, our Supreme Court, in holding that a woman was ineligible to the office of Prosecuting Attorney, said:

"Judge Cooley, in his work on Principles of Constitutional Law (page 257), in discussing the question of eligibility to office, says, 'When the law is silent respecting qualifications to office, it must be understood that electors are eligible, but no others.' For more than 60 years this has been regarded as the settled law of this State." (542)

"Judge Cooley undoubtedly wrote that with the full understanding of its significance. He had in mind, without doubt, that that had been the uniform practice in this State for nearly 60 years at that time, and that such was the common law of the State." (544)

A person must, therefore, be an elector, in order to hold the office of Prosecuting Attorney. It is not sufficient for him to be an elector somewhere in the State. He must be an elector in the county, the electors of which elect him to the office.

In People v. Goodwin, 22 Michigan. 495, our Supreme Court held that residence within the circuit is not essential to eligibility to the office of Circuit Judge. The reasoning in this case was based upon principles which are inapplicable here. Furthermore, the Court expressly pointed out that residence is a material factor in the case which you present. The Court, in part, said:

"There are many officers of long standing, in regard to which the necessity of residence arises from the nature of their duties, or from ancient custom or law. Town officers, and the ministerial officers of counties, have this duty laid upon them, and if the constitution were silent upon the subject, nothing but legislative interference, and in some cases, possibly, not even that would suffice to dispense with residence."

The fact that neither the statute nor the Constitution expressly prohibits a non-resident of the county from holding the office of Prosecuting Attorney, is in no wise controlling. Attorney General v. Abbott, 121 Mich. 546.) We are not warranted in assuming, in view of the foregoing authorities, that the electors of the county are free to elect anyone, other than an elector of the county. A further citation of authorities seems unnecessary. A contrary conclusion would be directly opposed to popular belief. Local conditions cannot operate to change this rule. There may be counties in this State in which there are no resident attorneys. This fact can not operate to change what is believed to be an important qualification. It is believed that an attorney must be a resident and elector of the county as a condition to his right to be elected to or hold the office of Prosecuting Attorney.

It by no means follows, however, that an attorney who is a resident and elector of the county is entitled, as a matter of right, to be nominated to the office by any political party. A political party may, or may not, nominate a candidate for the office of Prosecuting Attorney. There

are no means for compelling a political party to nominate a particular person as a candidate for office.

Very respectfully,
JNO. E. BIRD,
Attorney General.

BANKING LAW. Copartnership may not use the word "bank" on signs, or advertising, without the firm name, without violating Sec. 5275 C. L.

September 4, 1908.

Mr. A. T. Miller, Swartz Creek, Michigan:

Dear Sir—I am in receipt of yours of the 21st instant in which you state that you are connected with several copartnership banks which desire to put up signs in front of each such as "The Citizens Bank of Gaines," and desire to know whether this would violate the law, and also whether the printing below the sign of "a corpartnership" or "unincorporated" would be a compliance with the statute. You also desire to know whether the word "copartnership" printed on the stationery underneath the name of the bank and upon the pass books would be a compliance with the statute.

Section 5275 of the Compiled Laws of 1897, provides:

"No person or firm doing business under this act shall advertise or put up signs, or use any device or contrivance whatever, tending to convey the impression that the place of business of such person or firm is an organized bank; but in all such cases such person or firm, if they advertise at all, must use their individual or firm name, and state in such advertisement the names of every member of such copartnership or firm; in case any person or persons shall violate any of the provisions of this section they shall be deemed guilty of a misdemeanor, and shall each, upon conviction, be punished by a fine of not more than two hundred dollars and costs, or by imprisonment of not more than six months in the county jail: Provided, The words 'bank,' 'banking office,' or 'exchange office,' as a sign over the door or on the building, or used on notes, checks, or drafts, in connection with the individual or firm name, shall not be deemed a violation of the foregoing."

This statute permits the use of the words "bank," "banking office" or "exchange office" as a sign over the door or on the building, but we do not think it would permit the use of a name such as "The Citizens Bank of Gaines." The use of such a name as the above would clearly indicate to the ordinary person that the institution in question was an organized bank. Putting the words "unincorporated" or "copartnership" under neath would not be a compliance with the proviso permitting the use of the words "bank," etc., "in connection with the individual or firm name." The statute plainly requires that all advertising matter shall contain the "names of every member of such copartnership or firm." This would, of course, include stationery and all other printed matter concerning the bank. We think it would be permissible to use as a sign upon the door and upon checks and pass books such a name as

"The Citizens Bank of Smith, Jones & Company," inasmuch as under the provisions of Act 101 of the Public Acts of 1907 it is necessary for firms doing business under an assumed name to file a certificate with the County Clerk of the county in which the business is carried on showing names and postoffice addresses of each of the persons conducting or transacting the business.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

BANKING LAW. Savings Banks may invest in notes and bonds secured by trust deeds on real estate.

September 4, 1908.

Mr. Stephen B. Monroe, Pres. Kalamazoo Savings Bank, Kalamazoo, Michigan:

Dear Sir—We are in receipt of your communication of the 19th instant in which you call our attention to subdivision (i), Section 6116, C. L. 1897, governing the investments of savings banks, and request our opinion as to whether this clause covers notes or bonds secured by trust deeds.

The clause to which you refer permits savings deposits to be invested "upon notes or bonds secured by *mortgage lien* upon unencumbered real estate worth at least double the amount loaned." It will be noted that the clause does not state that the notes or bonds must be secured by mortgage, but uses the phrase "mortgage lien." It is well settled that a deed of trust to secure a debt is in legal effect a mortgage.

Jones on Mortgages, 6 Ed., Sec. 62.
F. & P. M. Ry. Co. v. Aud. Gen., 41 Mich. 635, 2 N. W. 835.

We think subdivision (i) is sufficiently broad in its scope to permit investments in notes and mortgages secured by trust deeds which otherwise comply with the provision of the section.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

STATE PUBLIC SCHOOL. A blind child otherwise healthy is "sound in mind and body and not afflicted with a contagious disease" so as to be admissible to the State Public School.

September 17, 1908.

Hon. J. B. Montgomery, Superintendent State Public School, Coldwater, Michigan:

Dear Sir—Our attention has been brought to the matter of Bernice Raymond, a blind child of the age of about six years, who was sent to

the School for the Blind at Lansing, and refused because she was under the age at which they are required to receive children at the Blind School, and was afterwards sent to the State Public School, where she was refused admission. Our understanding is that she is now at the State Public School awaiting an opinion from this Department as to what disposition shall be made of her.

The law governing the State Public School provides for the admission of children who are sound in mind and body, have no chronic or contagious diseases and are over one and under twelve years of age. We think this statute is intended to exclude only those children who are afflicted with diseases that may be dangerous to other children in the school, or are in such depraved mental condition that their presence there might be dangerous to the other children or exert a bad moral influence in this institution. We do not think the requirement that the child should be sound in mind and body means that it must be physically a perfect child. Any other construction would permit the exclusion of a child that has lost an arm or a leg or is deaf or dumb or possesses any of the many physical defects that might be named. It should be borne in mind that the State Public School was created for the purpose of taking care of unfortunate children who have been abandoned or neglected, and it is our view that the school should receive children who are in such a physical and mental condition that their presence in the school would not be dangerous to the other children and prejudicial to the morals of the institution.

We think that Bernice Raymond should be kept at the State Public School until she becomes of the age which will make her admissible to the School for the Blind, when provision may properly be made for her admission to that institution.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

STATE SANATORIUM FOR TUBERCULOSIS. Person must have acquired a legal settlement of at least one year in some county of this state to be eligible to admission to the sanatorium.

September 17, 1908.

Mr. R. L. Kennedy, Supt. State Sanatorium for Tuberculosis, Howell, Michigan.

Dear Sir—We are in receipt of your letter of the 10th instant in which you desire to know what length of time a person has to reside in this state to be eligible to admission to the State Sanatorium as a patient under Section 15 of Act 254 of the Public Acts of 1905.

In reply thereto will say that Section 15 of Act 254 provides:

"Such patients shall be of two classes, namely, first, persons resident of this State who on account of their poverty are unable to pay the necessary expenses for residence at said Sanatorium and second, resi-

dents of this State who are able to pay such fees as shall be fixed by the board of trustees."

Section 17 of the Act provides that a superintendent of the poor may cause to be sent a person admissible to the Sanatorium under the rules "who is a charge upon the county." The statutes relative to the support and care of poor persons make such poor persons a charge upon the county in which they have been last continuously settled for one year. The Supreme Court of this state has said that a settlement of one year is necessary in order to fix the liability upon the county for the support of an insane person.

In re Woodcock, 123 Mich. 369.

In this case they held that the insanity law adopts the provisions of the poor law by reference. We think the reasoning of this case is applicable to the question submitted by you, and that the term residence as used in this statute means such a residence as would make the person a legal charge upon the county from which he is sent.

It is, therefore, our opinion that a person to be eligible to admission to the Sanatorium must have acquired a legal settlement of at least one year in some county of this state.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CORONERS INQUESTS. Amount and method of auditing and paying fees in county cases.

September 17, 1908.

Mr. James Corgan, Ontonagon, Michigan:

Dear Sir—We are in receipt of your letter of the 14th instant with inquiries concerning coroners' fees and expenses of holding coroners' inquests.

In reply thereto will say that the blank enclosed by you is for use in the case of inquests upon strangers, expenses of which are paid by the state after being allowed by the Circuit Judge, and is not adapted to use in the case of inquests on residents, the expenses of which are payable by the county. Three dollars is all a coroner is allowed for an inquest in addition to the fees prescribed by Section 11223 of the Compiled Laws of 1897, no matter what length of time is consumed. If the Board of Supervisors refused to audit the bills of the coroner for his fees and mileage, he could undoubtedly compel them to act by mandamus. The bills for fees and mileage of witnesses, jurors, etc., should be filed with the County Clerk by the persons entitled to the same for allowance by the Board of Supervisors. If the coroner should pay these bills out of his own funds he would have to take an assignment of the claims and trust to the Board of Supervisors to allow them as presented.

We return the blank herewith.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

LIQUOR LAW. Dealer must execute new bond if he removes from one place to another, even though in the same city.

September 18, 1908.

Mr. A. F. Bunting, Michigan Bonding & Surety Co., Detroit, Michigan:

My dear Sir—In reply to your inquiry of the 16th as to whether it is necessary for a liquor dealer to execute a new bond when he removes from one place to another in the same city will say that the statute makes it necessary for him to do that. That portion of the statute which is material here is as follows:

"And the principal shall not be allowed to sell spirituous, malt, brewed, fermented or vinous liquors in any other building or place than that specified in said bond, *without giving notice and executing another bond in the manner above prescribed.*"

Compiled Laws of 1897, Sec. 5386.

I think this fully covers your inquiry.

Very truly yours,
JNO. E. BIRD,
Attorney General.

PRIMARY ELECTION LAW. Petition for a recount, whether of the entire state or a particular precinct or county, should be filed with the state canvassing board.

September 18, 1908.

Hon. George A. Prescott, Secretary of State, Lansing, Michigan:

Dear Sir—I have your inquiry of September fifth, in which you ask:

"(1) In case a candidate for governor desires to secure a recount of the entire state when and with what board must he file his petition and will he be required to deposit more than $100.00 to secure a recount of the entire state?

(2) In case he desires to secure a recount in any county, township, city or precinct when and with what board must he file his petition and what deposit will be required?"

Replying thereto would say, Section 41 of the General Primary Election Act provides, in part, as follows:

"Any candidate voted for at any primary election provided for in this act, who conceives himself aggrieved on account of fraud or error by the board of primary election inspectors, in the count of the votes cast, or the returns made by said board, may, on or before the close of the day or days upon which the board of State, city or county canvassers meet, present to and file with the chairman of the particular board, a written or printed petition, which shall be sworn to, and shall set forth as near as may be the nature of the errors or fraud complained of, and the particular township, ward, or precinct in which the alleged irregularities occurred and ask for a recount of the votes cast therein. Such petitioner shall at the same time deposit with the chairman of

said board the sum of ten dollars for each and every township or ward, the vote of which he requests to have recounted by said board: *Provided*, That no candidate shall be required to deposit more than one hundred dollars."

It is my opinion that a petition for a recount in the case of a candidate for Governor should be filed with the State Canvassing Board. The various county canvassing boards cannot be said to canvass the result of the primary election in the case of a candidate for State office, but simply compile the returns from the various voting precincts and forward the result to the State Canvassing Board, which canvasses the returns and determines the result throughout the State.

It was the evident intent of the Legislature to have a petition for a recount in the case of a candidate for any office, filed with the board charged with the duty of canvassing the returns and determining the result. Therefore, in the case of a candidate for Governor, regardless of whether the recount is of the entire State or a particular precinct or county, the petition should be filed with the State Canvassing Board.

Relative to the amount which is required to be deposited, the statute is very clear that the amount shall in no case exceed one hundred dollars.

Very respectfully,
JNO. E. BIRD,
Attorney General.

ELECTION LAWS—CONSTITUTIONAL AMENDMENTS. Question as to whether ballots for constitutional amendments must be numbered. The words "county or state" or "city" cannot be printed on ballots.

October 7, 1908.

Hon. Edgar O. Durfee, Probate Judge, Detroit, Michigan:

My dear Judge—I have your communication of September 28th in which you ask whether the ballots for constitutional amendments must be numbered the same as ballots containing the names for nominees for public offices.

In reply thereto would say section 155 of the pamphlet of election laws revision of 1907, being section 3657 of the Compiled Laws of 1897 provides in part that the ballots "shall be delivered to the inspectors and electors, and voted and canvassed in all respects in the same manner and subject to the same regulations, restrictions and penalties heretofore provided in this chapter for the ballots containing the names of the nominees for public office," etc. If the ballots upon which are printed constitutional amendments are to be voted in the manner above outlined, and the form of the ballot is not prescribed, they must be numbered in the same manner as ballots containing the names of candidates for public office. If, however, the form of the ballot upon which shall be printed the constitutional amendment is prescribed in the joint resolution authorizing the submission of the constitutional amendment,

this is controlling. Joint Resolution number 34 of the Public Acts of 1907, prescribes the form which shall be followed. There is nothing to indicate that the form of ballot therein prescribed shall be numbered and there will be a substantial compliance with the Joint resolution if the ballots are not numbered.

You also state that there is some difficulty in keeping the "county or state" ballots separate from the "city" ballots. You ask if there is any legal objection to printing on the corner which has the number the words "county or state" to designate the ballots prepared by the board of election commissioners and the word "city" on the corner of the city ballots.

In reply thereto would say the advisability of the method you suggest is apparent. A board of election commissioners has no authority to print or cause to be printed anything on the official ballots which is not provided for by law. I am therefore of the opinion that you would have no authority to print upon the various ballots the words which you suggest.

Very respectfully,
JNO. E. BIRD,
Attorney General.

LIQUOR LAW. The public authorities cannot reduce the amount of the liquor tax, under any circumstances.

October 7, 1908.

Mr. Oliver T. Peters, Emery Junction, Michigan:

Dear Sir—I am in receipt of your communication of October 5th in which you ask whether the public authorities can reduce the amount of the liquor tax at Emery Junction.

In reply will say that the local authorities have no right to reduce the amount of the liquor tax as fixed by law. The fact that the party who is running the hotel has a large family, and the fact that a hotel is necessary at Emery Junction, furnish no excuse whatever for such action. The law is mandatory and applies to all people who engage in the traffic of selling liquor.

Very truly yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAW. "United Christians" must comply with the law (Secs. 3621, 3622, etc. C. L. 1897) and file its vignette with the Secretary of State, before it can have its ticket placed upon the official ballot.

October 7, 1908.

Hon. Edgar O. Durfee, Judge of Probate, Detroit, Michigan:

Dear Sir—I have your communication of October 6th submitting a

copy of the proposed ticket of the "United Christians'" political party. It does not appear that this political party has complied with the law relative to the filing of a vignette with the Secretary of State. You ask whether or not it is the duty of the election commissioners to print this ticket upon the official election ballot.

In reply thereto would say it appears that the political party in question has not complied with those provisions of general election law (3621, 3622, etc. C. L. of 1897), which entitled it to have its ticket placed upon the official ballot. I am of the opinion it is not the duty of the board of election commissioners to print this ticket upon the official election ballot. It is suggested, however, that the Chairman and Secretary be informed of your decision in order that they may comply with the statute if they so desire.

The certificate of the Independence Party is herewith returned.

Very respectfully,
JNO. E. BIRD,
Attorney General.

COURT FEES: Under Secs. 315, 907 and 413, C. L., 1897.

October 7, 1908.

Mr. John Garvin, County Clerk, Ontonagon, Michigan:

Dear Sir—We are in receipt of your letter of the 24th ultimo relative to fees.

In reply thereto will say that the fee of $2 payable before the commencement of any cause in Court; the fee of $2 before suit brought into Circuit Court on appeal; and fee of $2 before suit brought into Circuit Court on certiorari are each payable to the county and must be collected and turned over to the county regardless of whether or not suit is brought on for trial in the Circuit. See Sections 315 and 907, Compiled Laws of 1897.

The fee of $2 for entering judgment by confession is provided for by Section 11215, Compiled Laws of 1897, and is not payable to the county, but is a part of your official fees if your county still remains upon the fee system.

The stenographer's fee of $3 is provided for by Section 413, Compiled Laws of 1897, and applies only to civil cases on the law side of the Court. It does not apply to chancery cases.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAWS—NEW CONSTITUTION—CONSTITUTIONAL AMENDMENTS. Ballots for voting upon new constitution are to be separate and distinct from those for voting upon the amendments.

October 7, 1908.

Mr. George A. Brown, County Clerk, Pontiac, Michigan:

Dear Sir—Relating to your inquiry by telephone whether the ballots for use in voting for the proposed new constitution should be separate and distinct from ballots upon which are printed proposed amendments to the constitution, would say that Section 155 of the pamphlet of general election laws, being Section 3657 of the C. L. of 1897, provides in part that "whenever any constitutional amendments or other questions are proposed to be submitted to the electors, the board of election commissioners of each county shall cause them all to be printed on one ballot, separate and distinct, from the ballots containing the names of nominees for public office, the substance of each amendment or other question to be clearly indicated upon said ballots," etc. It is believed that the foregoing language does not contemplate that the question of adoption or rejection of the proposed new constitution shall be voted for upon the ballots containing the substance of constitutional amendments. Furthermore, Section 8 of Act 272 of P. A. 1907 provides in part that "the board of election commissioners in each county in this State shall cause to be printed, in an appropriate place on the ballots prepared for the purpose, the words:

Adoption of the revised constitution [ ] Yes.
Adoption of the revised constitution [ ] No.

It is also provided in Section 11 of the schedule of the proposed new constitution that "the board of election commissioners in each county shall cause to be printed on a ballot separate from the ballot containing the names of the nominees for office the words "etc."

It is believed that it was the intent of the Legislature to have the question of the adoption or the rejection of the proposed new constitution voted for upon ballots which do not contain any other question.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTIONAL AMENDMENT—TAXATION, of property of transportation lines, whether owned by corporation or individual. Sec. 10, Art. XIV.

October 28, 1908.

To the Voters—Joint Resolution Number 34 proposing an amendment to Section 10, Article XIV of the State constitution will be submitted to the voters at the coming election. This section as it now stands gives the Legislature the authority to "provide for the assessment of the property of corporations at true cash value by a State Board of Assessors."

An attempt to assess all transporation lines under this authority disclosed the fact that the property of many of the transportation lines was not *owned by a corporation* but was owned by *individuals, co-partnerships* and *joint stock associations.* The transportation lines owned by other agencies than a corporation have persistently refused to pay their taxes, and when payment has been demanded they have replied, "Your Board of Assessors has no right to assess us. They can assess only corporations and we are not corporations." This argument has been so conclusive that one Michigan railroad has recently had its corporate charter dissolved, leaving its ownership in individuals in order to escape the assessment made by the Board of Assessors.

In order to remedy this defect the last Legislature passed this joint resolution proposing an amendment to Section 10 by adding the following:

"The Legislature may provide for the assessment of the property of corporations, and the property, by whomsoever owned, operated or conducted, engaged in the business of transporting passengers and freight, transporting property by express, operating any union station or depot, transmitting messages by telephone or telegraph, loaning cars, operating refrigerator cars, fast freight lines, or other car lines, and running or operating cars in any manner upon railroads or engaged in any other similar business, at its true cash value by a State Board of Assessors."

The necessity for adoption of this amendment was so urgent in order to prevent any further loss in taxes to the State, that it was thought best to have it submitted separately from the revised constitution (which contains the same provision) so that in case the latter failed of adoption this proposed change could be made without further delay.

I most respectfully invite the consideration and support of the voters to this proposed amendment to the end that these delinquent transportation lines that have escaped taxation for six years may be made to pay the average rate of taxation.

Lansing, October 28, 1908.

JNO. E. BIRD,
Attorney General.

ELECTION LAWS. Certain provisions mandatory:

1st. requiring ballots to be initialed.

2nd. requiring ballots to be initialed in ink.

3rd. requiring all ballots to be initialed by the inspector first designated.

Lansing, Michigan, October 29, 1908.

Hon. Edgar O. Durfee, Detroit, Mich.:

My Dear Sir—I am in receipt of yours of the 27th inst. requesting my opinion as to whether the following provisions of the election law are mandatory and whether they should be literally observed by Election Boards.

1st, The law requiring ballots to be initialed.

2nd, The law requiring ballots to be initialed in ink.

3rd, The law requiring all ballots to be initialed by the inspector first designated.

The answer to these questions depends upon the construction to be given to Section 3632 of the Compiled Laws of 1897, which in part is as follows:

"The inspector so designated shall at once proceed to write his initials in ink on the lower left hand corner of the back of each of said ballots, but not upon the perforated corner, in his ordinary hand writing, and without any distinguishing mark of any kind. As each successive voter calls for ballot, another one of the inspectors shall deliver to him the first signed of the fifty ballots, and as the supply of ballots in the hands of the inspectors shall decrease, additional ballots shall be signed by the same inspector, so that at least twenty-five ballots so signed shall be at all times in the hands of the inspector delivering the ballots to the elector."

From the foregoing section it will be observed that the legislature in plain terms directs all ballots to be initialed; directs them to be intialed in ink, and directs that the initialing shall be done by the inspector first designated. These provisions with reference to the initialing were incorporated into the law by the Legislature for a purpose and that purpose was evidently to prevent and make more difficult the practice of fraud at elections. If we are to say now that these provisions are merely directory and that a non-observance of all or any of them will not invalidate the ballot after it has been cast, we are taking from the law the deterrent force against fraud which the Legislature evidently intended to give it.

If in its purpose to prevent fraud, the Legislature had not regarded the initialing of the ballot as important, it would doubtless have not required it, and had it been indifferent whether the initials were in pencil or ink, it would have directed the initials to be endorsed and said nothing about ink, and had it regarded as immaterial whether one inspector or another endorsed his initials on the ballot; it certainly would not have required the *same* inspector to endorse additional ballots after the first fifty ballots were partially exhausted.

If these provisions are to be construed as directory merely, then the whole scheme and purpose of incorporating them into the law fails, and they become mere surplusage; but if they are construed as mandatory, then it gives full force to the object which the Legislature was seeking to accomplish.

I can reach no other conclusion than that all of these provisions are mandatory, and that they should be literally followed by Election Boards.

It may not be fitting for Election Boards to take the initiative and disfranchise voters where these provisions have not been fully or partially complied with, before the Supreme Court has construed the law; but it is exceedingly dangerous for them to neglect or refuse to comply with these provisions, in view of the serious consequences that might follow if a recount of the entire state should be demanded.

Respectively yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAW. All ballots including adoption of and amendment to constitution must be initialed in ink by one inspector designated by the board.

(Telegram.)

Lansing, October 30, 1908, II a. m.

Sent to every County Clerk and City Clerk in the State:

Instruct inspectors of election that all ballots including adoption of and amendment to constitution must be initialed in ink by one inspector designated by board.

JNO. E. BIRD,
Attorney General.

FEES OF SHERIFF. For subpoenaing the clerk and chairman of the various boards for the recount under primary election law.

November 12, 1908.

Board of State Auditors, Capitol, Lansing:

Gentlemen—I have your inquiry of recent date, in which you ask to be advised in regard to the amount of fees to which the Sheriff of Huron county is entitled, for subpoenaing the clerk and chairman of the various election boards for the recent recount which took place before the board of state canvassers. The communication of Martin A. Honeywell, Sheriff of Huron county, to your Board, under date of October 12, 1908, states that he was called by 'phone from Lansing and was informed that subpoenas would be mailed to him immediately, to be served upon the clerk and chairman of each election board in his county. That in order to make the service, he required his deputies to be in readiness to serve the subpoenas on Friday night. That the papers did not come, and as a result the deputies were held there until the next day; and the sheriff was obliged to pay them for this time. Mr. Honeywell asks, in his communication, whether he can charge the amount paid to his deputies to the State, and he also asks how he is to charge for the fees for serving the subpoenas. Mr. Honeywell's bill, which you have enclosed, is for a total of $107.00. This amount is made up by charging for the service of the subpoena, the copy, and mileage at the rate of 10 cents per mile for each witness summoned.

It would seem that the sheriff should be entitled to the same fee for summoning members of the election board that he would receive for serving a subpoena upon witnesses. Act No. 181 of the Public Acts of 1903 prescribes the amount of fees to which a sheriff is entitled. The language of this act, relative to subpoenas for witnesses, reads as follows: "Serving a subpoena for witnesses, fifteen cents for each witness summoned and ten cents for each mile actually traveled, in going only, but when two or more witnesses live in the same direction, traveling fees shall be charged only from the farthest." It may be inferred

from Mr. Honeywell's bill that he charged for mileage for each person summoned, regardless of whether two persons were summoned on the same trip. The law does not permit this charge. He is only entitled to mileage for "each mile actually traveled in going only."

He is not entitled to be reimbursed for any such sums as he may have paid to his deputies for time spent by them prior to the time when they began subpoenaing witnesses.

Mr. Honeywell's communication and his bill are herewith returned.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,
JNO. E. BIRD,
Attorney General.

RAILROAD COMPANY—RIGHT OF WAY. Commissioner of the State Land Office has authority to convey to a railroad company sufficient land for a right of way, even though it is less than forty acres, etc.

November 12, 1908.

Hon. Wm. H. Rose, Commissioner of Land Office, Capitol, Lansing:

Dear Sir—I have before me the communication of Geo. L. Alexander, dated September 25th, which you have referred to this Department. It is assumed from this communication that the railroad company which Mr. Alexander represents wishes to secure a right-of-way across state lands. The question presented is whether you have authority to grant to this railroad company only a sufficient amount of land for its right-of-way, or if you only have authority to sell to the railroad corporation not less than a forty acre tract of land.

Section 6252 of the Compiled Laws of 1897 provides, in part, that "if any such company shall, for its purposes aforesaid, require any land belonging to the state,—the commissioner of the state land office,—may grant such lands to such company for a compensation which shall be agreed upon between them." This section also provides that if the compensation cannot be agreed upon, that the lands may be appraised as in other cases. It would seem, therefore, in accordance with the provisions of this statute that a railroad company has the same right to purchase land from the state for a right-of-way that it has to purchase land from a private individual.

The law expressly prohibits a railroad company from purchasing or owning more land than is necessary for its uses. Clearly, this railroad company cannot use more than such as may be required for its right-of-way. It would be a glaring inconsistency to hold that you have no authority to sell less than a forty acre tract of land to the railroad company, and also hold that the railroad company cannot own or purchase more land than it needs for its right-of-way.

It is my opinion that you have the right and authority to convey to

the railroad company in question such land as it may need for its right-of-way, in accordance with the manner indicated in the statute.

Very respectfully,
JNO. E. BIRD,
Attorney General.

INHERITANCE TAX LAW. Insurance company would, where policy is payable to the estate of the insured, be liable for the amount of the inheritance tax if it failed or refused to comply with the statute.

November 12, 1908.

Hon. James V. Barry, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—I have before me the communication of George W. Hubbell, General Counsel of the New York Life Insurance Co., which you have referred to this Department. Mr. Hubbell's communication raises the question whether the provision of Section 9 of Act No. 195 of the P. A. of 1903 (the inheritance law), requires an insurance company to give the notice therein designated of the payment of death claims to persons in the State of Michigan.

Replying thereto would say, when there is a named beneficiary in the policy of insurance, the inheritance tax law does not apply to the transfer thereof. If, however, the amount of insurance is payable to the estate of the insured, the inheritance tax law applies. The language of said Section 9 of the inheritance tax law has always been construed to apply to every prohibition expressed therein. It is true that the said section does not mention insurance companies, but it is believed that it was the intent of the Legislature to include insurance companies in the use of the words "or other institutions."

The purpose of this requirement in the statute is apparent. It is to forestall any action on the part of a beneficiary in securing any part or portion of the decedent's estate, without first paying the inheritance tax for which same is liable. No good reason suggests itself why an insurance company does not come within the rule. The prohibition only extends to a transfer or delivery to a person other than an executor, administrator, trustee or guardian duly qualified under the laws of the state. If an insurance company transfers the amount of a policy to the legally qualified officer representing an estate, there is no liability. If it makes an unauthorized transfer or delivery of same it is liable for the amount of the inheritance tax upon the transfer thereof.

It is my opinion that an insurance company would, where the policy is payable to the estate of the insured, be liable for the amount of the inheritance tax, if it failed or refused to comply with the language of the statute.

Very respectfully,
JNO. E. BIRD,
Attorney General.

EMBALMERS ACT. Applicant must be possessed of all of the qualifications at the time of applying for examinations, etc.

November 12, 1908.

Hon. Frank W. Shumway, Secretary, State Board of Health, Capitol:

Dear Sir—I have carefully considered your oral inquiry relative to the right of the State Board of Health to permit applicants for a license under the embalming act to write the examination prior to the time that they are possessed of the qualifications which constitute a prerequisite to the right of the board to grant a license. I understand that there are instances in which applicants who have not had at least two years actual instruction in embalming under a licensed embalmer in this state, or at least one year in some school of embalming, or who have not been actively engaged in the practice of embalming for five years prior to the date of examination, desire to write the examination and have the board withhold the license, if they pass the examination, until they are possessed of such qualifications. Section 3 of the embalming law provides, in part, that "no person shall be granted a license under this act, unless he shall have had at least two years actual, practical instruction in embalming and disinfecting under a licensed embalmer in this state, or at least one year of such instruction and has completed a course in some school of embalming whose standing is recognized by the State Board of Health, or who shall have been actively engaged in the practice of embalming for five years last prior to the date of his examination." The said section also enumerates the subjects in which the applicants shall be examined; and further provides that "all applicants for license to practice embalming shall have attained the age of twenty-one years and must furnish a certificate of good moral character, signed by three responsible citizens, one of whom must be a licensed embalmer who has been personally acquainted with the applicant for at least one year. All applicants shall furnish the State Board of Health satisfactory evidence of their proficiency in a common school education, that they have had at least two years' practical experience under a licensed embalmer in this state, or have had a practical experience of not less than one year under a licensed embalmer in this state and have completed the regular course of instruction in a school of embalming recognized as being in good standing by said board."

It may be fairly inferred that it was the intent of the Legislature to authorize the State Board of Health to grant a license immediately after the applicant has passed a satisfactory examination. A person can not be a bonafide applicant for an embalmer's license unless he possesses the qualifications prescribed in the statute. The State Board of Health can not be required to permit a person, who does not possess such qualifications, to write the examination. It has no authority to consider as an applicant one whose application blank discloses that he is not possessed of the statutory qualifications. If the rule were otherwise, anyone might write the examination, and if successful, could spend the necessary time to qualify himself and still be entitled to a license. The law is not subject to this construction. Such a rule would mean

that an applicant who comes under the five year class might not receive his license until fully five years after he had written his examination. It is the duty of the board to refuse to permit one whose application blank discloses that he is not possessed of the statutory qualifications to write the examination.

Very respectfully,
JNO. E. BIRD,
Attorney General.

COMMISSION OF INQUIRY RELATIVE TO CERTAIN LANDS, etc., claims for services and expenses should be allowed by the board of state auditors, even though incurred subsequent to July 31, 1908.

November 12, 1908.

Board of State Auditors, Capitol, Lansing:

Gentlemen—I have your communications of October 14th, enclosing claims of George Wilson, Perry Burgess and Charles B. Blair. The expenses in question seem to have been incurred under authority of Act 188 of the Public Acts of 1907, which is an act to create a commission of inquiry relative to certain lands in this state. That portion of the claim submitted by George Wilson is for hotel, hack and railroad expenses incurred by him from August 1st to August 17th inclusive. The claim of Perry Burgess which is questioned is for similar expenses incurred from August 1st to August 15th, inclusive. The claim of Charles B. Blair is for his salary as executive agent of the said commission from September 1st to October 10th, inclusive.

The act in question requires the commission of inquiry to investigate certain conditions affecting the problems referred to in the act; and Section 3 thereof requires it "to prepare and submit to the next Legislature a full report embodying a comprehensive plan for dealing with all of the matters aforesaid," etc. Section 4 of said act provides, in part, that "the report of said commission of findings, recommendations and draft of proposed Legislation above mentioned shall be ready for the state printer by the 31st day of July, 1908." Section 5 of said act authorizes the said commission to employ assistance, and provides that the expenses incurred shall be audited and allowed by the Board of State Auditors.

The primary object to be effected is to have the report of the Commission of Inquiry ready for the next Legislature. There is no limitation as to the time that might be occupied in preparing this report, except the reference to the date when the report shall be ready for the state printers. It is believed that this date does not necessarily fix a time beyond which expenses can not be incurred. The time when the report shall be prepared is at most a directory provision, and the report may be prepared later, as long as there is a subtantial compliance with the law.

I am of opinion that you have no right to refuse to allow the claims in question, on account or having been incurred subsequent to July 31st.

Very respectfully,
JNO. E. BIRD,
Attorney General.

ILLUMINATING OIL. Inspector must personally affix his brand upon barrels containing illuminating oil drawn from car tanks which have been inspected under Act 26 P. A. 1899, as amended by Act 197 P. A. 1903. Oil inspected and approved,—no offense to sell even though barrel in which it is contained is not branded.

November, 12, 1908.

Hon. Frank S. Neal, State Oil Inspector, Northville, Michigan:

Dear Sir—We are in receipt of your communication relative to the branding of barrels containing illuminating oil drawn from car tanks which have been inspected under Act 26 of the P. A. of 1899 as amended by 197, P. A. of 1903. You ask:

"Is it necessary for the deputy to fix his brand in person to each barrel or cask of oil that is drawn from a tank car which had previously been inspected and passed the requirements."

Also, "Would it be unlawful to sell oil that did not bear the inspector's brand on the barrel even though the oil had been inspected?"

Act 26, Section I thereof provides: "It shall be the duty of said State Inspector, or his deputies hereinafter provided, to examine and test the quality of all such oils offered for sale by any manufacturer, vendor or dealer, and if, upon such test, or examination, the oils should meet the requirements hereinafter specified, he shall fix his brand or device, viz.: "Approved," "with the date over his official signature upon the package, barrel or cask containing the same." This same section provides that when the oil so tested or examined is contained in tank cars, a certificate showing the approval or rejection of the oil shall be given to the owner thereof. And then provides "upon each barrel or cask drawn from such tank car, and offered for sale, the same brand or device shall be affixed thereto as is affixed by the inspector when he examines barrels or casks containing illuminating oil. This brand is constituted of the word "approved" with the date and the official signature of the inspector making the examination. The law does not provide for the placing of this brand upon any barrel or cask by any other person than the inspector making the examination. Inasmuch as the law requires that each barrel, or cask, drawn from a tank car which has been examined and approved by the inspector, must bear the inspector's brand of approval, we see no other way in which this brand may be placed upon the barrel, or cask, than by the inspector himself.

As to your second inquiry would say that we have been unable to find any provision in the law which makes it unlawful to sell or offer for sale, any barrel or cask of oil without the inspector's brand, when the oil contained in the barrel or cask has been examined and approved by

the inspector. Section 3 of said Act does make it unlawful to sell, or offer for sale, any illuminating oils when manufactured within or without this state which have not been inspected in the manner provided by the Act, as well as making it unlawful to falsely brand a cask or barrel containing oil, or to use casks or barrels having the inspector's brand thereon without having the oil inspected. Neither of these provisions, in our opinion, warrant the construction that it is unlawful to sell, or offer for sale illuminating oil, which has been inspected and approved, in a barrel or cask which does not contain the inspector's brand thereon.

Very respectfully,
JNO. E. BIRD,
Attorney General.

OFFICERS—CIRCUIT JUDGES. Appointed to fill vacancy holds office until the next general election, unless his successor is sooner elected.

November 17, 1908.

Hon. James O. Murfin, Circuit Judge, Detroit, Michigan:

Dear Sir—Your communication of November 12th is received. You state that considerable question has arisen locally concerning the length of your recent appointment as circuit judge. That it has been the general impression that if the supervisors do not call a special election to fill the vacancy, that you hold until the coming spring election. You ask for an expression of my views upon this subject.

In reply thereto would say, it was clearly the intent of the framers of the constitution that the judiciary shall be elected. People v. Burch, 84 Mich., 408 (415). The Constitution provides that "When a vacancy occurs in the office of judge of the supreme, circuit or probate court it shall be filled by appointment of the governor, which shall continue until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term." Sec 14, Art. VI of the Constitution.

It is also provided that "The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution." Sec. 37, Art. IV of the Constitution.

It will be observed from an examination of the first quoted provision of the constitution that the governor's appointee does not hold for the unexpired term, but that he holds only until a successor is elected and qualified. The constitution does not provide how or when a vacancy in this office shall be filled by an election; but does provide that the vacancy may be filled at an election. Therefore, the Legislature possesses the right to provide means for filling the vacancy by an election.

The statute provides that "When a vacancy shall occur in the office of judge of the supreme court, or judge of the circuit court, regent of the university, or member of the state board of education, thirty days or more before a general election, the secretary of state shall, at least twenty days before such election, cause a written notice to be sent to the sheriff of each of the counties within the election district in which

such vacancy may occur, which notice shall state in which office the vacancy occurred, and that such vacancy will be supplied at the next general election." Sec. 3604, Compiled Laws 1897.

Therefore, the term of the governor's appointee cannot extend beyond the next general election after the vacancy occurs, provided it occurs thirty days or more before such general election.

Sec. 3596 of the Compiled Laws of 1897 indicates the instances when special elections may be held. An examination of this section will disclose that the vacancy in question may be filed at a special election, if called. It is, therefore, my opinion that if a special election is not called to fill the vacancy caused by the resignation of Judge Brooke, that your appointment will extend to the next general election. Adsit v. Secretary of State, 84 Mich. 420.

Very respectfully,
JNO. E. BIRD,
Attorney General.

STATE VETERINARY LAW. An application for registration as an existing practitioner under the state veterinary law, made before January 1, 1908, may be perfected after that date.

November 18, 1908.

Mr. Charles A. Waldron, Sec., State Veterinary Board, Tecumseh, Michigan:

Dear Sir—We have examined the papers of Arthur Lane of Hillsdale county whose application for registration as an existing practitioner has been rejected by your Board.

It appears from these papers that the application for registration was filed before January 1, 1908. It is our opinion that the applicant would have the right to perfect his application by furnishing proper letters after that date. It is the duty of the Board to determine whether or not he has perfected his application so as to comply with the provisions of the statute. If the application was rejected by you solely upon the ground that the statutory recommendations from ten reputable freeholders were not filed before January 1, 1908, we think the Board's ruling could not be sustained. In order for us to determine whether the Board properly rejected the application it would be necessary for us to know all the grounds upon which the rejection was made.

We return the papers herewith. We also enclose you a copy of the opinion of the Supreme Court in:

Kerbs v. Veterinary Board,

recently decided.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

HEALTH LAW—BACTERIOLOGIST FEES. Bacteriologist not entitled to witness fees,—must be covered into the state treasury. Claim for analyses made for prosecuting attorney must be paid in full by board of supervisors.

December 1, 1908.

Hon. Frank W. Shumway, Secretary State Board of Health, Capitol:

Dear Sir—I have carefully considered your inquiry relative to the operation of Act 109 of the Public Acts of 1907, which is an act authorizing and requiring bacteriological examination in your department. The act provides for the appointment of a bacteriologist and provides for certain examinations and analyses free of charge. Section 3 of said act also provides that "The State Board of Health shall also make a bacteriological examination or analysis in all matters of a criminal nature whenever requested by the prosecuting attorney of the county in which the case may arise: Provided, however, That any prosecuting attorney requiring any analysis of a criminal nature shall be required to pay to the said State Board of Health the nominal cost of the materials used and for the time necessarily spent in making such examination or analysis, which amount shall constitute a charge against the particular county and shall be covered into the State treasury to the credit of the bacteriological fund in addition to the amount herein appropriated, and may be drawn by the State Board of Health in the manner now provided by the accounting laws of this State for the purpose of maintaining or adding to the equipment of the bacteriological division of the department of health."

You state that a certain prosecuting attorney recently asked that an examination of certain spots upon certain garments be made in your department. That the examination or analysis was made by the bacteriologist, and that under authority of the above quoted section you submitted a bill for $25.00, to cover the nominal cost of the material used and for the time necessarily spent in making the examination or analysis. That subsequently the bacteriologist was called as a witness in the case, and his fee as such witness was fixed by the circuit judge at $25.00. That the traveling expenses of the bacteriologist from Lansing to the place of trial and return were $3.02. That the total bill submitted to the board of supervisors was $53.02, which claim was allowed by the board of supervisors at about $40.00. You ask: first, is it the duty of the board of supervisors in question to allow the claim as submitted by you? Second, what disposition should be made of the amount allowed the bacteriologist as witness fees?

In reply to the first inquiry would say that the nominal cost of the material used and compensation for the time necessarily spent in making the examination or analysis, in all maters of a criminal nature, constitute a charge against the county. It is clearly the intent of the Legislature that the state shall be reimbursed for the materials used and for the time spent by the one who makes the analysis or examination. The board of supervisors of the county in question has no right to arbitrarily allow the bill at a sum less than its face, in the absence of anything to indicate that the bill is incorrect or excessive. I would suggest that

you credit upon the account the amount indicated in the check which you have received, and again submit the matter to the board of supervisors.

Relative to disposition which should be made of the expert witness fees, would say that the act is not, in itself, as clear as it should be upon this point. It is assumed that in view of the fact that the one who made the examination was called as a witness in this case, that it was determined that the spots upon the garment in question were blood. An examination or analysis is practically worthless in a criminal case, unless he who makes the examination or analysis may be called as a witness. However, when such person is acting as a witness, he is still in the employ of the State, and he is not personally entitled to any such amount as witness fees as may be allowed by the circuit judge. Such sum must be either covered into the general fund in the state treasury, or be covered into the state treasury to the credit of the bacteriological fund, as indicated in the above quoted section. It is my opinion that there is no clear line of demarcation between the witness fees in question and the compensation for time necessarily spent in making an examination or analysis. The latter must be credited to the bacteriological fund. I am inclined to believe that the expert witness fees should be covered into the state treasury for a similar purpose.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

GAMING. Playing a game in which the loser pays for the use of the table etc., on which the game is played is gaming within Act 203, P. A. 1907.

MINORS. It is a violation of Act 58, P. A. 1907 to permit children under 17 and students to remain in place where game of "box-ball" is played and loser pays for the use of the alley.

December 1, 1908.

Mr. W. Glenn Cowell, Prosecuting Attorney, Coldwater, Michigan:

Dear Sir—I am in receipt of your letter of the 28th instant in which you inquire whether the provisions of Act 55, Public Acts of 1907, prohibiting minor children from being permitted to remain in any room occupied for the purpose of playing ninepins, bowling, or any other unlawful game, applies to the game known as box-ball where the game is sometimes permitted to be paid for by loser and sometimes not.

Replying thereto will say that Act 203, Public Acts of 1907, amending Section 5936 of the Compiled Laws of 1897, provides:

"If any person shall keep, or knowingly suffer to be kept, in any building, yard, garden or dependency thereof, or in any field by him owned or occupied, any ninepin alley, or any alley to be used in the playing of ninepins, or any like game, whether to be played with one or more balls or with nine or any other number of pins, for the purpose of gaming or betting upon such game, or shall suffer any person to resort

to the same for the purpose of gaming or betting, he shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine not less than ten dollars nor more than fifty dollars, or imprisonment in the county jail not exceeding sixty days, or both in the discretion of the court."

It will be noted that this section refers to "any alley to be used in the playing of ninepins, or any like game, . . . for the purpose of gaming or betting upon such game." So far as we know the question of what constitutes gaming has not been passed upon by the courts of this State. Gaming is defined in 20 Cyc. 889 to include "playing for drinks, cigars, lunches, or other refreshments, or the fees for the use of the table, alley, or apparatus on which or with which the game is played," citing numerous cases. An examination of these cases convinces us that the weight of authority is to the effect that playing for the fees for the use of the apparatus with which a game is played constitutes gaming. This being true, it would be a violation of Act 55, Public Acts of 1907, to permit the children described in that act to remain in such a place for the reason that the game of box-ball played as stated in your letter is an unlawful game under Act 203, Public Acts of 1907.

As to whether the game of box-ball comes within the description of ninepins and bowling mentioned in Section 2 of Act 55, Public Acts of 1907, will say that this principle is laid down in 20 Cyc. 887:

"A change in the name of or modification in the method of playing a game will not take it out of the operation of a statute prohibiting it or betting on it, if the principle of the game remains."

From the description of the game of box-ball it is difficult to say wherein it differs in principle from ninepins or bowling. It certainly comes within the evil aimed at by Act 55, Public Acts of 1907, and especially so if it is customary to permit the loser to pay for the use of the alley.

We are inclined to hold that the statute, Act 55, Public Acts of 1907, applies to box-ball alleys such as you describe.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

BUILDING DONATED TO THE STATE—INSURANCE. A building donated to the state unconditionally is state property and within the statute providing for rebuilding and repairing state buildings damaged by fire.

December 1, 1908.

Mr. William Kelly, Chairman, Board of Control, Michigan College of Mines, Houghton, Michigan:

Dear Sir—I am in receipt of your letter of the 20th ultimo and note your statement relative to insurance upon the Gymnasium Building. The building, I am informed, was given to the State unconditionally for use in connection with the Michigan College of Mines. A building acquired in this manner is, in my opinion, as much State property as

one acquired through the usual channel by purchase with State funds; and is included within the provisions of the statute (2238 C. L.) with reference to the rebuilding etc. of buildings owned by the State and destroyed or damaged by fire.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAW—CIRCUIT JUDGE. The spring election in odd years is a general election, within section 3604 for supplying vacancies in office of circuit judge.

December 1, 1908.

Hon. James O. Murfin, Circuit Judge, Detroit, Michigan:

Dear Sir—Referring to your recent communication, in which you submit for my consideration the following question: Is the coming spring election, a "general election," within the meaning of Section 3604, C. L. 1897. This section provides:

"When a vacancy shall occur in the office of judge of the supreme court, or judge of the circuit court, regent of the university, or member of the state board of education, thirty days or more before a general election, the secretary of state shall, at least twenty days before such election, cause a written notice to be sent to the sheriff of each of the counties within the election district in which such vacancy may occur, which notice shall state in which office the vacancy occurred and that such vacancy will be supplied at the next general election."

Section 50 of the Compiled Laws provides:

"In the construction of the statutes of this state the following rule shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature, that is to say: Nineteen. The words 'general election,' shall be construed to mean the election required by law to be held in the month of November."

In regard to this legislative definition our Supreme Court, in Edgar v. Election Commissioners, 118 Mich. 418, says:

"There can be no doubt that the election in the spring of 1897 was in a sense a general election, and that general elections are periodically held, under our statutes, at times other than in the month of November. But that does not lessen the force of the statute quoted, or its application to cases growing out of acts which do not indicate that the term was to be given a different meaning from that provided by section two." (Section 2, herein mentioned, is Section 50 above quoted.)

It is necessary, therefore, to examine the section in question for the purpose of ascertaining whether or not the Legislature intended by the use of the term "general election" to include any other than the biennial November election. Section 3604 is Section 10 of Act 175 of 1851: "An Act to Provide for Holding General and Special Elections." Section 1 of said act provides in part:

"That a general election shall be held in the several townships and wards of this state, on the Tuesday succeeding the first Monday of Nov-

ember, in the year eighteen hundred fifty-two, and on the Tuesday succeeding the first Monday of November every second year thereafter."

The November election is the only election specified in said act as a general election. It would seem, therefore, that the use of the phrase "general election," in Section 10, would refer back to the general election specified in Section 1, namely, the November election. If this act were all that had to be considered, it would seem clear that Section 10 had reference to the November election; but before the question can be determined, other statutes, as well as the opinion of the supreme court, must be examined.

In Westinghausen v. People, 44 Mich. 265, the following language, referring to the above act, is found at page 271:

"In that act the November election is spoken of throughout as the general election, and vacancies in the offices of circuit judge and regents, as well as others, were to be filled at that election, and since 1857 it has been amended so as to include vacancies in the supreme court."

In my opinion the court does not here pass upon the question of supplying vacancies at the April election.

The same is true of Adsit v. Secretary of State, 84 Mich. 420, in which, relative to a vacancy in the office of circuit judge, it is said:

"The constitution and our laws plainly provide that a vacancy existed in this office, and that the election of November 4th, 1890, was the proper time to fill it."

In People v. Burch, 84 Mich., at page 417, the court says:

"Any spring election at which justices of the supreme court and regents of the university are elected is necessarily also a general election and is now so regarded."

It is true that in this case the court does not consider the legislative definition of "general election." However, owing to facts which I will mention later, I do not think it materially affects the court's opinion.

In People v. Palmer, 91 Mich. 286, the legislative definition of the words "general election" was construed, and the court, at page 286, says:

"It is clear that the spring election is not a general election, except the election relating to the justices of the supreme court, regents of the university, and circuit judges."

In Chase v. Election Commissioners, 151 Mich., at page 413, the court says:

"The case of People v. Burch (supra) is also authority for the proposition that the April election in the odd years is a general election.

"The case of People v. Palmer (supra) is also authority for the proposition that the spring election is not a general election, except the election relating to justices of the supreme court, and regents of the university, or circuit judges."

It would therefore seem that the April election in the odd years is a general election, under the above decision, relating to justices of the supreme court, regents of the university and circuit judges.

It will be remembered that the term "general election," under the legislative definition, only applies to a November election when such construction is not "inconsistent with the manifest intent of the Legislature."

Section 3743 of the Compiled Laws provides that:

"A general election shall be held in the several townships and wards of this state on the first Monday in April in the year one thousand eight hundred and sixty three, and on the first Monday in April in every second year thereafter, for the election of regents of the university, who shall enter on the duties of their office on the first day of January next succeeding their election."

It is plain that under the above statute the April election in the odd year, so far as regents of the university are concerned, is a general election.

The coming April election is the regular constitutional election for justices of the supreme court, regents of the university and members of the state board of education. If a vacancy should occur in any of these offices at the present time, I am clearly of the opinion that the court would hold that it should be supplied at the spring election, under Section 3604. Can we, consistent with the rules of statutory construction, say that the coming April election is a "general election" under Section 3604, as far as justices of the supreme court, regents of the university and members of the state board of education are concerned, and not as to circuit judges? I think not.

In addition to the above, the following officers will be elected, under the constitution, at the April election; superintendent of public instruction and six members of the state board of agriculture.

Considering the above cases and statutes and the new constitution, I am of the opinion that the coming April election is a "general election," within the meaning of Section 3604, Compiled Laws, and that your appointment as Circuit Judge extends only to such election.

Very truly yours,

JNO. E. BIRD,

Attorney General.

TAX LAW. Sale of state tax homestead land. Form of deed, includes village and city lots.

December 16, 1908.

Mr. Milo A. Boynton, Attorney at Law, Muskegon, Michigan:

Dear Sir—Your letter of the 7th inst. duly received and contents noted. In reply thereto would say that Act No. 211 of the Public Acts of 1905 makes all deeds issued by the Commissioner of the State Land Office under Sec. 131 of the General Tax Law, to state tax homestead lands reserved and withheld from entry, prima facie evidence of title in fee in the grantee. The fact that the deeds partake of the form of a quit claim deed is immaterial, in my judgment, as the grantee gets just what the State holds in the way of title. If the State has no title, the fact that the deed asserted title, if so drawn, could not benefit the grantee in any way. The form of deed used, in this particular, was prepared by this department, and is deemed to be in proper form.

With regard to State tax homestead lands which have been reserved and withheld from homestead entry, the proviso in Section 131 of the General Tax Law, to which you direct my attention, reads as follows:

"Provided, That in the sale of these lands so reserved and withheld, the same rules and regulations as provided in Act No. 21 of the Public Acts of 1873, entitled 'An Act to require the Commissioner of the State Land Office to give public notice of the restoration of reserved and forfeited state lands to market,' shall govern, and no bid shall be accepted for less than the minimum price as fixed by such Land Commissioner and Auditor General."

Construing Act 21 of the Laws of 1873 in connection with the various provisions of the General Tax Law and other statutes relating to this class of lands, but one conclusion can be reached; viz., that said Act 21 only applies insofar as it relates to the notice to be given of the restoration of such lands to market and the publication of the notice of sale.

Section 131 of the General Tax Law, as amended by Act No. 107 of the Public Acts of 1899, expressly provides for the homesteading of city or village lots. The reserving and withholding from homestead entry of State tax homestead lands and providing for the sale thereof was incorporated in said Section 131 by the amendment as found in Act 141 of the Public Acts of 1901, which applies to all State tax homestead lands which may be reserved and withheld from homestead entry. This being true, the provision in Section 3 of Act 21 of the Laws of 1873, which purports to limit sales to tracts of forty acres, except fractional parts of a section, can not apply to the sale of State tax homestead lands which have been reserved and withheld from homestead entry, which may be included within the plat of any city or village. It is the practice in the Land Department, however, to sell this class of lands, or at least to offer it, in the smallest legal subdivision.

I also call your attention to Act No. 84 of the Public Acts of 1903, entitled "An act to define and perfect the title to certain tax homestead lands and to limit the time for bringing actions in regard thereto." For the last four years at least, no state tax homestead lands have been sold at public auction by the Commissioner of the State Land Office until after six months has elapsed from the date of the recording of the deed to the State. Said Act 84 has been before the courts in numerous instances, and held good. I call your attention to the case of People v. Christian, 144 Mich. 247, in this particular.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW. Under Act 310, Public Acts of 1907, foreign corporations must be admitted if they show that they are incorporated for a purpose for which a Michigan corporation can be authorized.

December 17, 1908.

Hon. George A. Prescott, Secretary of State, "Capitol," Lansing, Michigan:

Dear Sir—We are in receipt of your letter of October 29th requesting an opinion from this Department as to whether a corporation organized

under the laws of another state for the purposes authorized by the laws of this State, but whose articles do not comply with the requirements of the laws of this State relative to domestic corporations doing the business which it proposes to do, can properly be refused a certificate of authority to do business in this State.

In reply thereto will say that, since the opinions given by this Department to the Secretary of State under date of April 28th, 1899, and June 16th, 1899, which opinions are reported in the Attorney General's Report for 1899 at pages 140 and 171 respectively, important amendments have been made to the law relating to the admission of foreign corporations to do business in this State. Act 310, Public Acts of 1907, as amended by Act 3, Extra Session of 1907, constitutes the law under which foreign corporations are admitted to do business in this State at the present time. Section 4 of Act 310, after providing for the issuance of a certificate of authority during the period of corporate existence of the foreign corporation seeking admission, and not exceeding thirty years, contains this proviso:

"Provided that no such foreign corporation shall be permitted to transact business in this State unless it be incorporated in whole, or in part for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the Secretary of State shall in the certificate which he issues state under what act such corporation is to carry on business in this State, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act: Provided further, That the carrying on in this State by such corporation, of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been so admitted, shall be sufficient cause for revoking the certificate of authority to do business in this State, and the Secretary of State may revoke such certificate. . . . ."

It will be seen from the above language that foreign corporations can be admitted to do only such business as domestic corporations are authorized to do. It will also be observed that, while such foreign corporations have all the powers, rights and privileges granted to domestic corporations, they are subject to all the restrictions, requirements and duties granted to or imposed upon domestic corporations, and that failure to comply with the requirements of the act under which the foreign corporation has been admitted authorizes the revocation of its certificate of authority.

We think the requirement that the foreign corporation shall be "subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act" refers to restrictions, requirements and duties imposed upon corporations after the corporate organization has been completed and not to conditions precedent to the organization of the domestic corporation under our laws. It is therefore our opinion that when a foreign corporation applies for admission the Secretary of State is limited in his inquiry to the question of whether the corporation is, in fact, a foreign corporation and whether it is organized in whole or in part for a purpose for which a domestic

corporation may be organized. If these facts are affirmatively shown, the Secretary of State should issue the certificate of authority. After the admission of the foreign corporation to do business it immediately becomes subject to the provisions of the statute under which it is admitted, and in all of its subsequent transactions must comply with the provisions of the law under which it is admitted or be subject to the penalties of the foreign corporation act.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

REGISTER OF DEEDS. Vacancy in office. Power to appoint to fill vacancy, term of appointment; calling of special election to fill vacancy and time of holding said election and power of deputy to perform duties of office.

December 30, 1908.

Mr. Edwin Rawden, Prosecuting Attorney, Tawas City, Michigan:

Dear Sir—You state by telegram that E. A. Crandall, register of deeds of Iosco county for present term, and register elect for ensuing term, died December 26th, 1908; that he had filed his oath of office and bond for ensuing term before his death; that his wife, Mabel Crandall, was appointed by him as his deputy for present term, and designated as his successor in case of vacancy, and that she has qualified under such appointment. From this statement of facts, you submit the following questions:

1. Who has power to appoint register of deeds for time being?
2. How long will such appointee hold office?
3. Must a special election be held to fill vacancy? If so, when must such special election be held?

Can board of supervisors defer calling such special election until the spring election of 1909?

5. In case no appointment was made, could Mrs. Crandall hold the office by virtue of such appointment as deputy for the present term until a special election were held?

The statutory provisions bearing upon the questions submitted are as follows:

Constitution, Article X, Section 3:

"In each organized county there shall be a . . . register of deeds . . . chosen by the electors thereof, once in two years, and as often as vacancies shall happen, whose powers and duties shall be prescribed by law."

Section 2610, Compiled Laws 1897:

"The register of deeds for each organized county shall be elected at the general election, for the term of two years, and shall give bond to the people of this state in the penal sum of three thousand dollars, with two sureties to be approved by the county treasurer, the condition of

which shall be, that he shall faithfully and impartially discharge the duties of his office."

Section 2612:

"The register of deeds shall appoint a deputy, to hold his office during the pleasure of the register . . . ."

Section 2613:

"In case of a vacancy in the office of the register of deeds, or his absence, or inability to perform the duties of his office, such deputy shall perform the duties of register during the continuance of such vacancy or disability."

Section 2614:

"If, during a vacancy in the office of the register of deeds, or his absence or inability to perform the duties of his office, there shall be no deputy register, or if such deputy be unable from any cause to perform the said duties, the judge of probate of the county may, by writing under his hand, appoint some suitable person to perform the duties of register of deeds for the time being, who shall take an oath of office, and give such bond as the said judge shall direct and approve."

Section 1169:

". . . When at any time there shall be in either of the offices of sheriff, coroner, register of deeds, or county surveyor, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county clerk and prosecuting attorney of the county to perform the duties of either of said offices for the time being."

Section 1155:

"Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent . . ."

Section 3596:

"Special elections may be held in the following cases, and for the election of the following officers, viz.:

3. When the right of office of a person elected to any of the aforesaid district or county offices shall cease before the commencement of the term of service for which he shall have been elected."

The county offices referred to are those named in the preceding section of the statute, and are the county offices filled at the general election held in November.

Section 3597:

"A vacancy in either of the offices named in the first section of this act, which shall not have been supplied before a general election, may be supplied at such election."

Section 3599:

"Special elections for the choice of the county officers named in section one of this act shall, except in cases in which a special election is to be ordered by the governor, be ordered by the board of supervisors."

Section 2647:

"The regular terms of office of the several county officers elected at the general election shall commence on the first day of January succeeding their election, but those elected at a general election, or at a special election to fill vacancies may qualify and enter upon the execution of their office immediately after being notified of their election."

Taking up the questions in their order, I submit my answers as follows:

1. If a register was to be appointed to fill vacancy during the present term, I think there is absolutely no doubt but that the county clerk and prosecuting attorney of the county would, under Section 1169, have the authority to appoint some suitable person to perform the duties of said office for the time being. If the appointment is not made during the present term, but is to be made subsequent to January the first, 1909, the question, in whom rests the appointing power, is not so clear.

If the present deputy is authorized under the statute to perform the duties of the office subsequent to December 31st, then the appointing power of a person to perform the duties of the office of register rests in the county clerk and prosecuting attorney, under Section 1169. If the present deputy only holds such office during the present term, then in the case of a vacancy in the office of register of deeds, and there being no deputy register, the power to appoint some suitable person to perform the duties of register of deeds for the time being rests in the judge of probate, under Section 2614.

Both Sections 1169 and 2614 are found in the Revised Statutes of 1846, except that Section 2614 originally conferred all appointing power upon the circuit judge, or county judge, and was amended to read as it now reads by Act 76 of the Public Acts of 1877. Section 2614 therefore being the later enactment, it can not be said to be repealed by Section 1169, even though there may be some inconsistencies between the two sections; and under the rule of statutory construction, these two sections must be given force and effect, if possible. We therefore construe the sections so that in those cases in which there is a vacancy in the office of register of deeds and a deputy in office, the appointing power rests in the county clerk and prosecuting attorney; and in those cases in which there is a vacancy in the office of register of deeds and no deputy in office, the appointing power rests in the judge of probate.

2. Mr. Crandall's death before the expiration of his term of office has, under the statute, created a vacancy in the office of register of deeds; which vacancy may be supplied by appointment under Section 1169; and if it is supplied, the appointee would hold during the time Mr. Crandall himself would have been entitled to hold the office; in other words, to the end of the term. The case is somewhat complicated by Mr. Crandall having been elected to succeed himself; but the same principle of law is involved if some other person had been elected as his successor. If another had been elected and had filed his oath and bond prior to his death, as Mr. Crandall did, Mr. Crandall's right to the office would not have extended beyond the present term, and upon his failure to assume the office at the commencement of the next term, a vacancy would then have been created. We think that the same principle applies here, and that a new and distinct vacancy will be created in the office of register of deeds by the fact that Mr. Crandall will not assume the office upon the first day of January, and that the vacancy which exists in the office at the present time, on account of Mr. Crandall's death, will cease with the termination of the present term.

If the vacancy is supplied subsequent to January first, the person appointed will hold until his successor is elected and qualifies.

3. It is my opinion, based upon Secor v. Foutch, 44 Mich. 89, that the statutory provision with reference to the filling of a vacancy in the office of register of deeds is permissive, and that the board of supervisors may hold a special election or not, as they see fit.

4. The board of supervisors may defer calling a special election for supplying the vacancy until the spring election of 1909.

5. It is a general rule that the act of a deputy acquires validity because it is the act of the principal, and that the authority of the deputy ceases upon the death of the principal; consequently, unless the statute continues the deputy in office after the death of the register, his authority ceases with the death of his principal.

The statute does continue the deputy in office after the death of his principal. It is also a general rule that a deputation of necessity expires with the office on which it depends, and this rule goes so far as to state that even in those cases in which the principal who appointed the deputy be reelected, that a new appointment is required to continue in office his former deputy. This rule must be here applied, unless the statute continues the deputy in office after the expiration of the term. Section 2613, as above noted, provides that the "deputy shall perform the duties of register during the continuance of such vacancy." Upon the principle enunciated above, that the present vacancy stops with the end of the present term, and that a new and distinct vacancy will be created upon January first by Mr. Crandall not assuming the office, we are led to the conclusion that the deputy, under this section, continues to perform the duties of the office during the present vacancy; in other words, until the end of the term, and that Mrs. Crandall, under her appointment as deputy for the present term, would not be authorized to continue as deputy until a register was appointed or elected.

Yours truly,
JNO. E. BIRD,
Attorney General.

COUNTY ROAD SYSTEM. Petition should be signed by ten freeholders of the township outside of the limits of the incorporated village, as well as ten freeholders within each incorporated village and city in the county.

January 7, 1909.

Hon. Albert D. Edwards, Capitol, Lansing:

Dear Sir—Relative to your inquiry as to whether a petition for the submission of the question of the adoption of the county road system to the electors of the county must be signed by ten freeholders residing in each township, village and city in the county, I submit the following.

Section 1 of Act 82 of the Public Acts of 1907 provides, in part:

"On petition of not less than ten freeholders residing in each of the several organized townships, incorporated villages and cities, of any

county, or upon a majority vote of the members of the board of supervisors, the board of supervisors of such county shall submit the question of adopting the county road system to a vote of the electors of such county."

The same section, prior to the amendment of 1907, read as follows:

"The board of supervisors of any county shall on petition of not less than ten freeholders residing in each of the several townships in any county submit the question of adopting the county road system to a vote of the electors of such county in the manner prescribed by this act."

It will be noted that the law prior to the amendment of 1907 required not less than ten freeholders from each of the several townships in the county; that the amendment requires not less than ten freeholders from each of the several organized townships, incorporated villages and cities.

As every village is situated in a township, it would seem that the legislature by requiring in the amendment of 1907 that the petition is signed by not less than ten freeholders from each of the organized townships, incorporated villages and cities, intended to require more by the amendment than was required by the law prior to the amendment. In other words, it seems to me that the intention was to require that the petition be signed by ten freeholders of the township outside of the limits of the incorporated village, as well as ten freeholders within the incorporated village.

There is another reason which leads me to this same conclusion; viz., the question of taxation. The freeholders of the villages and cities of the county, as well as the freeholders of the township, are taxed for the maintenance of the good roads system in the county. Section 1 of Act 82 is broad enough in its language to require that the petition should be signed by ten freeholders from each organized township, incorporated village and city in the county. On account of their being taxed for the maintenance of the system, I believe that such a construction should be given to the act as to give them a voice in the preliminary steps in the adoption of the system. I am, therefore, of the opinion that Section 1 of Act 82 of the Public Acts of 1907 requires that the petition for the submission of the county road system be signed by ten freeholders in each of the several organized townships who reside outside of the limits of incorporated villages, ten freeholders who reside within the limits of each incorporated village, and ten freeholders who reside within the limits of each incorporated city in the county.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

ELECTION LAW. What state officers are to be elected at the biennial spring election of 1909.

January 7, 1909.

Hon. Perry F. Powers, Cadillac, Michigan:

My dear Sir—I have your communication of January 4th, in which you ask what state officers are to be elected at the next biennial spring election.

In reply thereto would say the constitution requires the following named officers to be elected at the biennial spring election to be held in April of this year: Two justices of the supreme court; two regents of the university, a superintendent of public instruction, one member of the state board of education, and six members of the state board of agriculture.

It would seem proper to observe the above arrangement as to the position upon the ticket.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—SUPERINTENDENT OF PUBLIC INSTRUCTION. Must be elected at the spring election of 1909, notwithstanding the fact that he was elected for the term at the preceding November election.

January 7, 1909.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol:

Dear Sir—The question has been raised whether it will be necessary to elect a superintendent of public instruction at the biennial spring election to be held on the first Monday in April of the present year. Section 2 of Article XI of the New Constitution seems decisive of this question. This section provides, in part, that "A superintendent of public instruction shall be elected at the regular election to be held on the first Monday in April, 1909, and every second year thereafter." This language cannot be construed to mean other than that a superintendent of public instruction must be elected at the next April election. The fact that you were elected for a term of two years at the last November election would not operate to change this conclusion.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—STATE BOARD OF EDUCATION. Member must be elected at spring election of 1909, notwithstanding the fact that he was elected at the preceding November election.

January 7, 1909.

Mr. W. J. McKone, Member State Board of Education, Albion, Michigan:

Dear Sir—A question has been raised relative to Section 6 of Article XI of the New Constitution, which provides, in part, that

"The state board of education shall consist of four members. On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board,

who shall hold his office for six years from the first day of July following his election."

It will be impossible to have a board consisting of four members and elect one member every two years, when the term of office is six years. Therefore, this section must be construed in connection with Section 2 of the same article, which in referring to the superintendent of public instruction provides that "He shall be a member and secretary of the state board of education." The fourth member of the state board of education is therefore the superintendent of public instruction.

It will be observed that the above quoted provision of the constitution makes it imperative that a member of the state board of education shall be elected at the next April election.

There are at present three members of the state board, and since a member must be elected at the next April election, it becomes material to determine who the member so elected will succeed. It is believed to have been the intent of the framers of the constitution to require the member so elected to succeed the member of the state board of education whose term of office expired on December 31st, 1908. The fact that the member whose term expired on that date was re-elected at the last November election for a term of six years cannot operate to change this conclusion. If you had not been re-elected as a member of the state board at the last November election, you would continue in your office until July 1st, 1909, and no longer. This rule will operate to extend the present term of the other two members of the board of education from January until the first day of July subsequent to the date when their present term of office would ordinarily expire.

It is, therefore, my opinion, that you will hold office as a member of the state board of education by virtue of your re-election last November until the first day of July, 1909, when the member to be elected at the next April election will succeed you in office.

Very respectfully,
JNO. E. BIRD,
Attorney General.

HOMESTEAD EXEMPTION LAWS. Exemptions from levy and sale on execution.

January 8, 1909.

Prof. Joseph Harding Underwood, Department of History and Economics, University of Montana, Missoula, Montana:

Dear Sir—Your communication of the 17th ult. received, submitting certain questions relative to the homestead exemption laws of the state of Michigan, as follows:

"(1) What was the reason for the inauguration of homestead exemption laws in your state?

"(2) Has the amount of the original exemption been increased?

"(3) To what extent is advantage taken of the exemption, and is it productive of fraud?

"(4) In what ways, if any, is it evaded?

"(5) What is your opinion of its desirability; of its effect upon the interest rate; upon enterprise and development?

"(6) Does it tend to increase or to diminish the size of estates?

"(7) Do the courts tend to extend or to restrict its operation?"

Section 1 and 2 of Article XVI of the constitution of this state, which was adopted in 1850, read as follows:

"Section 1. The personal property of every resident of this state, to consist of such property only as shall be designated by law, shall be exempted to the amount of not less than five hundred dollars from sale on execution or other final process of any court, issued for the collection of any debt contracted after the adoption of this constitution."

"Sec. 2. Every homestead of not exceeding forty acres of land, and the dwelling house thereon, and the appurtenances to be selected by the owner thereof, and not included in any town plat, city or village; or instead thereof, at the option of the owner, any lot in any city, village, or recorded town plat, or such parts of lots as shall be equal thereto, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of the state, not exceeding in value fifteen hundred dollars, shall be exempt from forced sale on execution, or any other final process from a court, for any debt contracted after the adoption of this constitution. Such exemption shall not extend to any mortgage thereon, lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same."

These constitutional provisions were not changed by the revised constitution which took effect January 1, 1909.

In answer to your first and seventh questions, I direct your attention to the decision of the supreme court of the state of Michigan in the case of Riggs v. Sterling, 60 Mich. 643. Numerous references are made in this opinion to the purpose for which these provisions were incorporated in the constitution; to which reference is again made by the supreme court in the case of Allen v. Crane, 152 Mich. 384. You will note from the opinion of the court in Riggs v. Sterling that these exemptions are liberally construed.

In answer to your second question, I would say that certain additions have been made to the exemptions enumerated by the constitution by subsequent enactments of the Legislature; viz., in Act No. 50 of the Public Acts of 1887, entitled "An act to provide for the incorporation and regulation of certain corporations generally known as building and loan associations," Section 16, (being Section 7589 Compiled Laws 1897) which reads as follows:

"The shares held by any member, being a householder, of any association incorporated under the provisions of this act shall be exempted from levy and sale on execution or attachment to the amount of one thousand dollars in such shares at the par value thereof. Provided, That such exemptions shall not apply to any person who shall have a homestead exempted under the general laws of this state."

Under Section 3479 of the Compiled Laws of 1897, all engines and apparatus requisite for ordinary use by fire companies owned by incorporated cities or villages, kept for use of any fire companies therein, and all waterworks with the buildings, machinery and fixtures and

the ground occupied thereby, etc. are exempted from levy or sale for any debt, damages, fine or amercement whatever.

By Act 88 of the Public Acts of 1875, private burial grounds are exempted from levy on execution or attachment, not exceeding in quantity one acre of land. The statute provides for laying out said burial grounds, not included within the corporate limits of any city or village, making a survey thereof, the execution of deed to trustees and the recording of the same.

In 1861 an act was passed exempting sewing machines from levy and sale on execution, not exceeding one such machine for each family, and making void any chattle mortgage, bill of sale or other lien unless signed by the wife if such property is owned by a married man.

In answer to your third question, would say that so far as my experience goes, these exemptions are generally taken advantage of; but do not understand that they are productive of fraud generally.

In answer to your fourth question, would say that I know of no way in which these exemptions can be evaded.

I think your fifth question will be answered by the decisions of the supreme court to which your attention has been directed.

In answer to your sixth question, would say that in my judgment the size of estates is not materially affected by the exemptions referred to.

I have answered your communication with the understanding that your questions related to exemptions from levy and sale on execution.

Respectfully yours,

JNO. E. BIRD,

Attorney General.

LOCAL OPTION LAWS—RAILROADS. Liquor cannot be sold on trains while such trains are passing through counties in which the local option law is in force.

January 8, 1909.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—Your letter of the 18th ultimo duly received. You state that the Commission has received a letter from the General Passenger Agent of a Railroad Company in which he states:

"There seems to be a wide difference of opinion as to whether liquors may be sold in dining cars while train is in motion when passing through so called 'dry' counties."

and requests that you ask the Attorney General for an opinion upon the question.

For reply thereto I would say that the local option law so-called (Act 207, Public Acts 1889, as amended) provides in Section 1:

"That it shall be unlawful for any person directly or indirectly, himself or by his clerk, agent or employe, to manufacture, sell, keep for sale, give away or furnish any vinous, malt, brewed, fermented, spirituous or intoxicating liquors, or any mixed liquor or beverages, any part of which is intoxicating, or keep a saloon or any other place where any

such liquors are manufactured, sold, stored for sale, given away or furnished in any county of this State on and after the first day of May next following the adoption by the board of supervisors of such county of a resolution prohibiting the same, as provided in section thirteen of this Act, so long as such resolution remains unrepealed:"

A proviso to this section relieves from its operation druggists or registered pharmacists selling such liquors under and in compliance with the restrictions and requirements imposed upon them by the general laws of the State and Sec. 25 of the act as amended.

It will be observed from an examination of this Section and the other provisions of the Local Option Law that the sale, giving away, or furnishing of any liquors mentioned in the act except by druggists in compliance with the law, is absolutely prohibited in those counties in which the Local Option Law is in force. By the terms of the statute druggists are the only persons permitted to sell liquor in local option counties, and they may sell only for the purposes specified in the statute. There is no provision in the statute relieving railroad companies from its operation.

I am of opinion that railroad companies are within the terms of the statute and that they cannot sell any of the liquors mentioned in the statute upon trains when the same are passing through counties in which the local option law is in force.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—AMENDMENTS. Form of proposal or resolution which is necessary under Sec. 1 of Art. XVII of the constitution to authorize an amendment to the constitution to be submitted to the people.

January 13, 1909.

Hon. Francis J. Shields, State Senator, Capitol, Lansing:

Dear Sir—Your oral inquiry, as to the nature of the proposal or resolution which is necessary under Section 1 of Article XVII of the Constitution to authorize an amendment to the constitution to be submitted to the people, has been considered.

Section 1 of Article XVII of the Constitution reads as follows:

"Any amendments or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the legislature shall direct; and, if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve such amendment or amendments, the same shall become part of the constitution."

It is understood that heretofore the Legislature has submitted proposed amendments to the constitution in the form of joint resolutions.

If a proposed amendment could be considered as legislation, such proposal could only be in the form of a bill, as Section 19 of Article V of the Constitution provides:

"All legislation shall be by bill and may originate in either house of the legislature."

However, it is believed that a proposed amendment to the constitution is not legislation, and that the proposal need not be in the form of a bill.

An examination of the constitution discloses that a joint resolution is not referred to therein. A joint resolution is expressly referred to in the old constitution. (See Section 19 of Article IV of the old constitution.)

The section of the constitution to which you refer authorizes amendments to be proposed, and there is nothing to indicate what the form of the proposal shall be. It is, therefore, my opinion that a concurrent resolution proposing an amendment or amendments to the constitution, if passed in the manner indicated in Section 1 of Article XVII of the Constitution, would be sufficient to authorize the submission of the proposed amendment to the electors of the state.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—SALARIES OF STATE OFFICERS. The officers named in section 21 of the constitution of 1908, are entitled to the salary therein designated from and after January first, 1909, and legislation is not necessary to make said section 21, operative.

January 13, 1909.

Hon. Fred Z. Hamilton, General Accountant, Capitol, Lansing:

Dear Sir—I have your communication of January 9, which reads as follows:

"Will you kindly inform this department whether, under the provisions of the new constitution, the salaries of the Governor, Attorney General, Secretary of State, State Treasurer, Commissioner of the State Land Office and Auditor General are to be paid from January 1, 1909, at the rate provided for in Section 21 of Article 6, or is it necessary for the legislature to pass an act in reference to this subject before Section 21 above mentioned can become operative?"

In reply thereto would say, Section 21 of Article VI of the new constitution provides that:

"The governor and attorney general shall each receive an annual salary of five thousand dollars. The secretary of state, state treasurer, commissioner of the state land office and auditor general shall each receive an annual salary of twenty-five hundred dollars. They shall receive no fees or perquisites whatever for the performance of any duties connected with the offices. It shall not be competent for the legislature to increase the salaries herein provided."

It will be observed that the salary of each of the officers named is definitely prescribed. The new constitution was adopted by the voters at the November election, and it is therefore "The supreme law of the state on and after the first day of January, nineteen hundred nine, except as herein otherwise provided." Section 11 of the Schedule.

Section 7 of the Schedule is the only provision which might raise the question that the salaries prescribed in the new constitution are not operative without legislative action. This section provides that:

"Until otherwise provided, the salaries or compensation of all public officers shall continue as provided under the existing constitution and laws."

Notwithstanding this general language, this section can be held to apply only to such salaries as are not expressly fixed in the constitution. To hold otherwise, would be to hold said Section 7 of the Schedule inconsistent with Section 21 of Article VI. If we hold that owing to the provisions of Section 7 of the Schedule, the officers named in Section 21 must draw the salary prescribed prior to January 1st, 1909, until there is legislative action, we are in effect holding that if the present legislature should adjourn without enacting a law relative to this subject the officers named would continue to draw the old salary, notwithstanding the express language of the constitution. We cannot adopt any such doctrine.

It is my opinion that the officers named in said Section 21 are entitled to the salary therein designated from and after January 1st, 1909, and that legislation is not necessary to make said Section 21 operative.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CORPORATIONS—MONOPOLIES IN RESTRAINT OF TRADE.

Corporations may give one person in particular locality the exclusive right to sell a certain brand of a commodity. Such contracts not in violation of the law preventing monopolies and contracts in restraint of trade.

January 13, 1909.

Mr. A. F. Keseberg, Ludington, Michigan:

Dear Sir—Your letter directed to the Michigan Railroad Commission has been referred to this Department for reply.

You state that you understand The Northern Lime Company, of Grand Rapids, is a combination of three different lime companies, controlling what they term their brands, Original Petoskey, Bay Shore Standard, and Bay Shore Cement, and which they advertise to the trade; that you started in business a year ago and that at that time ordered a car of Original Petoskey Lime, receiving a reply to the effect that under an agreement made with Mr. J. Kiesewalter they could not let you have that brand, but that when this agreement expired about the first of the year they would make arrangements so that you could have the Original

Petoskey brand; that soon after the first of the year you sent them another order asking them to make shipment of Original Petoskey, to which they replied that Mr. Kiesewalter has exclusive sale of Original Petoskey lime for an indefinite time, or, in other words, as long as the volume of business furnished them is satisfactory; that Kiesewalter is not acting as their agent; is simply given the exclusive right to handle that particular brand. You ask whether this is lawful and whether they can refuse to furnish this brand which they advertise to the trade.

For reply thereto I would say that the records in the office of the Secretary of State show that The Northern Lime Company is a corporation with a capital of ten thousand dollars, organized sometime in March, last for the purpose of manufacturing, buying and selling lime, plaster, stucco, hair, cement, builders materials, wood, logs, and similar materials. So far as it appears from these records or from any information furnished us, there is nothing to show that this company is organized or conducting its business in violation of Act 255 of the Public Acts of 1899, or Act 329 of the Public Acts of 1905, prohibiting monopolies and contracts in restraint of trade.

But whether or not such is the case, it does not seem to us that this woul affect the grievance complained of. I know of nothing that would prevent a corporation from giving to one person in any particular locality the exclusive right to handle a particular brand of a commodity. Upon the case stated in your letter, I cannot see how we can be of any assistance to you in the matter.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION. Sec. 22 Art, V, "No bill shall be passed or become a law at any regular session of the legislature until it has been printed and in the possession of each house for at least five days." "Fractions of a day" not to be counted.

January 14, 1909.

Hon. Francis J. Shields, State Senator, "Capitol," Lansing:

Dear Sir—In response to your inquiry as to the time when the "five days" referred to in Section 22, Article V of the Constitution, begins to run and whether a fractional part of a day may be taken into consideration, will say said section provides, in part, that:

"No bill shall be passed or become a law at any regular session of the Legislature until it has been printed and in the possession of each House for at least five days."

The purpose of this constitutional provision is apparent. It is to insure publicity and to afford to every one the opportunity of familiarizing himself with a proposed law. The Senate has no official knowledge that a bill has been printed until such fact has been properly reported to it by the officer who is charged with the duty of having the bills printed. A bill might be printed, returned to the proper officer and remain in his possession a number of days before such fact is made

known to the Senate. If it is held that you should begin to count the days beginning with the day on which the printed bill is returned from the printing office to the proper officer of the Senate, the very purpose of this constitutional provision might be thereby destroyed. It is my opinion that the first day of the necessary five days that can be counted is the day upon which the fact that the bill is printed is officially reported to the Senate by the Secretary.

Permit me to suggest that owing to this constitutional provision it would be wise to include in the order of business another heading, for instance "Secretary's report of bills printed," in order that this important matter may not be overlooked.

In regard to the second question, I believe it to be a well settled rule that the law does not take cognizance of fractions of a day. It is therefore my opinion that irrespective of the time of day when the Secretary reports to the Senate that the bill is printed that the day upon which such report is made should be counted as one day of the necessary "five days" referred to in this section of the constitution.

Very respectfully,
JNO. E. BIRD,
Attorney General.

LABOR LAW. Reports of inspection of factories, etc.

January 14, 1909.

Captain J. M. Mac Gregor, No. 8 Winslow St., Detroit, Michigan:

My dear Sir—I am in receipt of yours referring to certain reports of the Labor Department and asking whether they should not be made more definite.

In reply will say that the only sections of the law that I am able to find that are applicable are Sections 13 and 15 of the pamphlet which, in part, are as follows:

"For the purpose of carrying out the provisions of this act, the Commissioner of Labor is hereby authorized and required to cause at least an annual inspection of the manufacturing establishments, factories and hotels, also all stores employing ten or more persons, in this State. . . . . And Provided further, That the Commissioner of Labor shall present to the Governor, on or before the first day of February of each year, a report of such inspection, with such recommendation as may be necessary: And provided further, That in addition to the above amount allowed for expenses, there may be printed not to exceed one thousand copies of such reports for the use of the Labor Bureau for general distribution, ..."

Section 13 provides, in part:

"Deputy factory inspectors shall make report to the Commissioner of Labor of each factory, hotel and store visited and inspected by them, which report shall be kept on file in the office of the commissioner, and a copy of said report shall be left with the owner or person in charge of the establishment visited and inspected. . . . . ."

You will note that the law requires an annual inspection but does not provide as to what the report shall show. I presume under this law that the Commissioner might cause more than one inspection to be made, and if he did, the report should be upon file in his office; and I think good business methods would suggest that the report should be signed by the inspector who made the inspection, but the law is so loosely constructed that, in the event the report does not contain any specific thing or is not signed, I know of no way to compel it to be done.

In analogous cases the law usually provides what the reports shall contain, but there is nothing of the kind here. For these reasons I do not know of any remedy for the complaints which you make based upon this delinquency.

In reply to another phase of it will say that I think the original report should be kept on file in the office of the Commissioner. I think the trouble is largely by reason of the law being crude and defective. It should be so amended as to direct what inspection should be made and what the reports should show.

Very truly yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—COUNTY ROAD SYSTEM. Amount of tax which can be raised since the adoption of the constitution of 1908. County having once adopted the "County road system" need not vote again even though the law was amended or superceded by a new law.

January 15, 1909.

Mr. Clarence M. Browne, Prosecuting Attorney, Saginaw, Michigan:

Dear Sir—I am in receipt of your communication of the 13th inst., in which you submit the following inquiries:

"1. Can the board of supervisors of the county, under the provisions of the new constitution, (Section 26 of Article VIII) authorize the raising of not to exceed three dollars per thousand for county road purposes, (in a county which has adopted a county road system under the old constitution) or must legislation on the part of the legislature, fixing and determining the amount that counties may raise, not exceeding three dollars per thousand, be had before the board of supervisors of such county can take any action upon the subject?

"2. Until the legislature has passed some act in determining the amount which may be raised by counties which have already adopted the county road system, are the laws enacted under the former constitution still in force?

"3. The county of Saginaw, having heretofore adopted the county road system under the former constitution, should the legislature hereafter pass a general law authorizing counties to raise three dollars per thousand on assessed valuation, would it be necessary to submit the question of raising said amount of three dollars per thousand to the electors of this county?

"4. Would it be necessary, under the provisions of the new constitution, to submit to the electors the question of the adoption of the county road system in a county having already adopted the county road system under the former constitution, in order that such county might, should the legislature authorize the raising of three dollars per thousand, raise that amount?"

In answer to these inquiries, I submit the following: Section 26 of Article VIII of the Constitution, among other things, provides:

"The tax raised for road purposes shall not exceed in any one year three dollars upon each one thousand dollars of assessed valuation for the preceding year."

This provision does not require the Legislature to pass a law authorizing the board of supervisors to raise a tax to an amount not exceeding three dollars per thousand; but is a prohibition, in that it places a limit upon the amount of tax which the Legislature may authorize the board of supervisors to raise for road purposes. The matter is entirely in the hands of the Legislature as to whether the limit shall be three dollars on a thousand, or remain as it is at present; consequently, the board of supervisors, until they have been so authorized by the Legislature, may not levy a tax of three dollars per thousand for county road purposes.

2. Section 1 of the Schedule of the Revised Constitution provides:

"The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed."

Section 4281 C. L. 1897, as amended, relative to the tax for county road purposes provides:

"Such tax shall not exceed two dollars on each one thousand dollars of assessed valuation of such county according to the assessment roll of the last preceding year, except in counties where the privilege of a greater tax has been granted by the legislature, and in the counties of Wayne, Kent and Houghton it shall not exceed twenty-five cents on each one thousand dollars of the assessed valuation of the county according to the assessment rolls of the last preceding year."

We see no inconsistency between the part of the above provision which limits the tax to two dollars on each one thousand dollars of assessed valuation of the county, and the provision of the present constitution limiting the tax to three dollars per thousand; consequently, such provision, under Section 1 of the Schedule, is still in full force and effect.

3 and 4. As to your third and fourth inquiries, would say that we do not believe that it would have to be re-submitted. The particular law that was in force at the time that the people of Saginaw county adopted the county road system was not voted upon by the people; the question that they voted upon was, "Shall the county road system be adopted by the county of Saginaw." While the county road law as it now stands, or as it may hereafter be amended, may be somewhat different than the law in force at the time of its adoption in the county of Saginaw, it is still the county road system. If it would have to be re-submitted for adoption if the Legislature authorized a tax greater than the amount that was authorized at the time of the adoption, we see no

reason why it would not have to be re-submitted every time the Legislature made an amendment thereto. We do not think it can be said that such action is required, in view of the fact that it was not the law, but the system known as the county road system, that was adopted.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—EXISTING LAWS. Changes in existing laws as are deemed necessary to adapt the same to the constitution of 1908.

January 19, 1909.

To the Senate and House of Representatives, "Capitol," Lansing:

Gentlemen—Section 8 of the Schedule of the new Constitution provides that:

"The attorney general of the state shall prepare and report to the legislature at the commencement of the next session such changes in existing laws as may be deemed necessary to adapt the same to this constitution."

The new constitution makes a number of changes, and some of the changes are of such a nature that legislative action is almost imperative. There are other changes which do not require legislative action, except as the necessity therefor may demand.

Those sections of the constitution to which attention is especially directed, and under authority of which laws may very properly be enacted, are as follows:

Section 19, Article II—To provide for an appeal in criminal cases.

Section 4, Article III—Giving women the right to vote in certain cases.

Section 9, Article IV—Providing compensation for the members of the Legislature.

Section 39, Article V—Providing for publishing laws within sixty days after final adjournment.

Section 21, Article VI—Providing for salary of certain state officers.

Section 8, Article VII—Providing for the division of state into judicial circuits.

Section 12, Article VII—Relating to the salary of circuit judges.

Section 14, Article VII—Authorizing the election of more than one judge of probate in certain counties.

Section 6, Article VIII—Providing for the appointment of a board of jury commissioners in each county.

Section 9, Article VIII—Authorizing boards of supervisors to fix salaries and compensation of county officials.

Section 10, Article VIII—Relative to the tax which may be levied by the board of supervisors for the construction or repair of public buildings or bridges.

Section 11, Article VIII—Authorizing any county or counties to appropriate money for the construction of public and charitable hospitals,

sanatoria and other institutions for the treatment of persons suffering from contagious or infectious diseases.

Section 14, Article VIII—Relative to bridges and dams upon navigable streams.

Section 15, Article VIII—Authorizing the board of supervisors to consolidate townships.

Section 18, Article VIII—Relative to township officers. This section does away with the office of school inspector.

Sections 20, 21, 22, 23, 24, 25, Article VIII—Relative to the government of cities and villages.

Section 26, Article VIII—Relating to the improvement and maintenance of highways, bridges, and culverts by counties, districts and townships.

Section 28, Article VIII—Relative to the use of highways, streets, alleys, or other public places of any city, village or township by a public utility corporation.

Section 29, Article VIII—Limiting the term of any franchise or license granted by a municipality to thirty years.

Section 14, Article X—Authorizing the State to engage in reforestation.

Section 15, Article X—Relative to deposits of State money.

Section 18, Article X—Relative to the keeping of accounts of state officials, boards and institutions and by all county officials.

Section 2, Article XI—Providing for the election of a superintendent of public instruction.

Section 6, Article XI—Fixing the time when members of the state board of education shall be elected.

Section 7, Article XI—Fixing the time when members of the state board of agriculture shall be elected.

Section 8, Article XI—Relative to the organization, power and duties of the state board of agriculture.

Section 9, Article XI—Relative to a system of primary schools.

Section 14, Article XI—Relative to the establishment of libraries in townships and cities.

Section 7, Article XII—Authorizing the Legislature to establish rates for the transportation of passengers and property on railroads and by express companies.

Section 1, Article XIII—Relative to the right of eminent domain.

Section 4, Article XIII—Authorizing the regents of the University of the State of Michigan to take private property for the use of the university.

We have prepared a number of bills in this Department, which may be of service to the members of the Legislature. We will be able to furnish some of these bills during the present week. We have also collected a considerable amount of data bearing upon all such changes as are made necessary by the new constitution. It has not been deemed advisable to prepare any bills upon certain subjects, notably such bills as may be necessary under authority of Section 20 to 25 inclusive of Article VIII, as these sections refer to matters which can be best adjusted by the Legislature.

We will be pleased to confer with any of the members relative to

these changes, and will willingly co-operate with the members or the proper committee in the preparation of any and all such legislation as it may be desired to enact.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—CITIES AND VILLAGES. The constitutional provision is not self operative; cities may not amend their charters until the Legislature has provided the means therefor.

January 20, 1909.

Mr. C. S. Reilley, City Attorney, Cheboygan, Michigan:

Dear Sir—I am in receipt of your communication of the 14th inst., in which you state that you understand this Department has handed down some opinions in reference to the right of cities to amend their charters; that you have various proposed amendments which you desire to make to the charter of the city of Cheboygan; that you understand the law to be that such amendments to take effect as laws must be passed by the Legislature and approved by the people. You desire to know if your understanding of the law is correct.

In reply thereto would refer you to Section 30 of Article V of the revised Constitution, which provides:

"The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

Also would refer you to Sections 20 and 21 of Article VIII.

Section 20 provides in part:

"The legislature shall provide by a general law for the incorporation of cities and by a general law for the incorporation of villages."

Section 21 provides:

"Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and through its regular constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of the state."

Under Section 30, above quoted, it will be noted that no local or special act may be passed by the Legislature where a general act can be made applicable. It seems to us that the Legislature under Section 20, above quoted, can make a general act applicable, under which general act it will rest with the various cities to frame, adopt and amend their charters through their regularly constituted authorities.

The provision relative to the submission of the local act to the electors only applies in those cases in which the Legislature is authorized to pass a local act; in other words, cases in which a general act can not be made applicable. Until the Legislature has passed this general law

for the incorporation of cities and provided therein the means whereby cities may frame, adopt and amend their charters, we are of the opinion that the various city charters now in force must remain as they now are.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

BOARD OF SUPERVISORS. Adjourned sessions close together will be considered as one continuous session and supervisors entitled to but six days pay therefor.

January 20, 1909.

Mr. H. H. Fitzgerald, Flint, Michigan:

Dear Sir—I am in receipt of your communication, relative to the pay or supervisors for regular and adjourned sessions. You state that the supervisors of your county have just taken pay for four days service this week, after drawing pay for six days previously during this session, and that you understand this to be contrary to law. You desire to be advised relative to same.

In reply thereto would call your attention to Act 237 of the Public Acts of 1905, which provides that:

"Every member of such board of supervisors shall be allowed a compensation of three dollars per day for his services and expenses in attending the meeting of said board . . . Provided, That no supervisor shall be allowed pay for more than one day for each twenty-four hours that the board of supervisors shall be in session: Provided, . . . which compensation of three dollars per day shall extend to and be allowed for the first twelve days only of any continuous regular session, and six days only for an adjourned session of said board, and for the first three days only of any special session of said board. . . ."

While I do not express an opinion upon the question of whether the supervisors are entitled to pay for more than one adjourned session during the year, I am of the opinion that if the law permits the supervisors to draw pay for more than one session during a year, such sessions must not be close together as to in reality amount to one continuous session. If the adjourned sessions are so close together as to in reality amount to one continuous session, I believe the courts would hold that such an adjournment was taken solely to evade the law and that the members of the board of supervisors would not be entitled to pay for attendance at the second adjourned session, if at the first adjourned session they had drawn pay for six days.

Very respectfully,
JNO. E. BIRD,
Attorney General.

MILITARY LAW. Members of the governor's staff attending the inaugural ceremonies at Washington, under orders of the Commander-in-chief, are not entitled to grade pay or expenses.

January 21, 1909.

General James H. Kidd, Quartermaster General, "Capitol," Lansing:

Dear Sir—I am in receipt of your communication of the 20th instant requesting an opinion upon the question, whether or not, in the event that the Governor, as Commander-in-Chief of the state military forces shall order the members of his staff, any or all of them, to accompany him to Washington to take part in the Inauguration ceremonies and parade, the duty thus enjoined would be military duty within the meaning of the statute and authorize the payment of the expenses incurred by the members of the staff by the state.

In reply will say that this question is covered by an opinion given to James N. Cox, Asst. Adjt. General, under date of May 21, 1908. One of the questions submitted by the Adjutant General at that time was whether or not the members of the Governor's staff were entitled to expenses incurred in taking part in the proceedings incident to the unveiling of the monument erected to former Governor Stevens T. Mason at the city of Detroit. It was held that the members of the staff were not entitled to either grade pay or to their actual expenses. What was there said applies with equal force to the case under consideration, and I am clearly of the opinion that the members of the Governor's staff attending the Inaugural ceremonies and parade at Washington under the orders of the Commander-in-Chief would not be entitled to receive from the state either their grade pay or the actual expenses incurred.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—APPROPRIATION BILLS, DISTINCT ITEMS. The Legislature should separate the different items in appropriation bills so it will be possible for the Governor to exercise the power conferred by Sec. 37 of Art. IV, to veto "items" thereof.

January 22, 1909.

Hon. William H. Bradley, Senate Chamber, Capitol, Lansing:

Dear Sir—I am in receipt of the communication of yourself and Senator Kline, dated the 21st inst., in which, as members of the committee on Finance and Appropriations, you request instructions relative to what should be set forth in the way of distinct items in appropriation bills under the provisions of Section 37 of Article IV of the revised constitution.

Replying thereto would say that the section of the contitution referred to reads as follows:

"The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

While this provision does not in express terms impose upon the Legislature the duty to separate the different items in appropriation bills, it certainly was contemplated by that provision that the Legislature should so frame those bills that it will be possible for the Governor to exercise the constitutional power conferred upon him. It certainly is imperative that this be done if this provision of the constitution is to be given any effect. Accordingly, I think that all appropriation bills susceptible of division into distinct items should, so far as practicable, be so divided. This does not necessarily mean that every appropriation bill should be itemized to the most minute extent possible, but that the bill should be itemized under general heads, and where a specific sum of the gross amount appropriated is to be expended for a particular purpose, that amount should be separately stated as an item in the bill.

Heretofore it has been customary for the Legislature in making appropriations to separate, to a certain extent, the several items for which a specific part of the gross amount appropriated is to be used. An example of this found in Act 254 of the Public Acts of 1907, making appropriations for the Industrial Home for Girls. The first section of that act appropriated a gross sum for current expenses. It probably would be impracticable to further itemize the amount appropriated for this purpose. Section 2 of the act appropriates for special purposes the sum of $14,925.00, and specifies that certain parts of that sum shall be used for certain purposes named in the act; for example, for an electric light plant, $3,450.00; for porches at Clark, Gillespie, Haviland and Croswell cottages, $1,500.00; for porch in rear of Palmer cottage, $200.00; for painting two cottages and administration building, $750.00; etc.

It seems to me that in order to give the governor an opportunity to exercise his power to veto separate items under the constitutional provision, some further division could well be made in the items above stated. For example, the appropriation of $1,500.00 in a gross sum for porches at four cottages named could well be further itemized to indicate the amount necessary at each cottage; and the appropriation of $750.00 for painting two cottages and the administration building further itemized to indicate the amount necessary for painting each of the buildings. Where a sum is appropriated for a building and repairs, the amount necessary for each should be separately stated.

Not having any proposed appropriation bill before me, I have only attempted to indicate in a general way what I believe should be done in order to give effect to the constitutional provision in question. If the Legislature does not see fit to so itemize the appropriation bills passed by it that it will be possible to give effect to this provision of the constitution, I do not know that there is any remedy; but as I have indicated herein, I believe it to be the duty of the Legislature to place

it within the power of the Governor to exercise the right which the constitution gives him.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW—PARTNERSHIP ASSOCIATION LIMITED.
Cannot be organized for the purpose of doing a commercial credit business such as is prescribed by act 253, P. A. 1897.

January 28, 1909.

Hon. Frederick C. Martindale, Secretary of State, "Capitol," Lansing:

Dear Sir—I am in receipt of your letter of the 13th instant in which you inquire whether an association can be organized under Act 191 of the Public Acts of 1877 as amended (the partnership association limited act) for the purposes set forth in Act 253 of the Public Acts of 1897.

Act 191 of the Public Acts of 1877 (Section 6079 et seq. C. L.) is entitled:

"An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances."

Section 1 of this act provides that these associations may be formed "for the purpose of conducting any lawful business or occupation within the United States or elsewhere."

Act 253 of the Public Acts of 1897 (C. L. Section 8521 to 8526) is entitled:

"An act to provide for the incorporation of commercial mercantile, collection and reporting agencies."

After prescribing the method of organization of corporations under this act it is provided in Section 5:

"That each stockholder in said corporation shall be personally liable for any moneys collected by said corporation for its customers in the regular course of the business of such corporation, and in case any stockholders shall be holden for any debt, he may collect from each stockholder the pro rata share due from each."

Section 6 provides that:

"All corporations formed under this act shall have a capital stock of not less than ten thousand dollars and shall have a paid-up capital of not less than ten thousand dollars."

The Legislature has expressly recognized associations organized under Act 191 of the Public Acts of 1877 as corporations.

Section 36 of Act 232 of the Public Acts of 1903, the general corporation law, excepts from its operation "the corporations provided for in the following statutes: Chapters 160 to 164 both inclusive . . ." Chapter 160 is the partnership association limited law. The supreme court has held that partnership associations limited are to be governed by the general rules governing corporations.

Rouse Hazzard & Co. v. The Detroit Cycle Co., 111 Mich. 251,
Staver etc. Mfg. Co. v. Blake, 111 Mich. 283,
Yonkerman v. Advertising Agency, 135 Fed. 614.

In view of the express recognition of the Legislature that partnership associations limited are corporations and the principles laid down in the decisions above mentioned, it is our opinion that partnership associations limited partake of the nature of corporations to such an extent that they cannot be organized to transact a business around which the Legislature has placed special restrictions. No one will contend that a corporation can be organized under Act 232 of the Public Acts of 1903 for the purposes mentioned in Act 253 of the Public Acts of 1897 although the enacting clause of Act 232 permits the organization of a corporation for any lawful purpose. It is our opinion that by prescribing a special method of incorporation for this class of corporations, requiring a capital stock of at least ten thousand dollars which must be fully paid in and fixing a special liability upon the stockholders, that the Legislature has placed such corporations in a class with banks, trust and deposit companies, loan associations and insurance corporations.

Machen Modern Law on Corporations, Vol. 1, Section 63.

We believe it was the intention of the Legislature in passing Act 253 of 1897 that only such associations could conduct the business included within its terms as were organized under its provisions. We therefore hold that a partnership association limited cannot be organized under Act 191 of the Public Acts of 1887 to do the business authorized by Act 253 of the Public Acts of 1897, and that the articles referred to in your letter should not be received.

We return the copy of the articles and correspondence herewith.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTIONAL LAW—LOCAL ACT. An act authorizing a particular county to borrow money and issue bonds after a vote of the people for the purpose of purchasing land upon which to hold agricultural fairs is a local act on a subject upon which a general law can be made applicable.

TAX LAW. Question of whether money raised by taxation to be expended by the county in purchasing land and holding agricultural fairs is taxation for public purposes.

January 28, 1909.

Mr. Fred H. Pratt, Prosecuting Attorney, Traverse City, Michigan:

Dear Sir—I am in receipt of your letter of the 9th instant in which you state that the board of supervisors of Grand Traverse county is desirous of submitting to the people of that county at the next April election the question of borrowing ten thousand dollars and issuing the bonds of the county therefor to purchase land for the purpose of holding agricultural fairs. You ask whether there is anything in the revised

constitution that would prevent the passage by the Legislature of a local act giving the board of supervisors authority to submit the question and whether or not the constitution prohibits a county from acquiring land for this purpose.

For answer thereto I would say that it would be impossible to pass either a general or local law authorizing the board of supervisors to submit this question at the April election in view of the provisions of Section 21 of Article V, of the revised constitution. Under this provision the Legislature can only give immediate effect to acts making appropriations and acts immediately necessary for the preservation of the public peace, health or safety. The legislation in question obviously does not come within any of the classes enumerated in this section and neither a general or special act could be given effect in time to authorize the submission of the question at the April election.

On the question whether or not a local act could be passed, would say that Section 30 of Article V of the constitution provides:

"The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

That a general act can be made applicable in the case in question seems to admit of no doubt. I can see no reason why a general law authorizing any county to purchase lands for the purpose of holding fairs and authorizing the board of supervisors of any county to submit the question of borrowing money and issuing bonds to the electors of the county would not fully cover the situation.

The state of Wisconsin has or did have a general law, reference to which will be found in:

Hixon v. Town of Eagle River, 91 Wis. 652,

which gave the county board power "to purchase land not exceeding in value the sum of eight thousand dollars for the purpose of holding thereon fairs and exhibitions of an agricultural character," etc. I am of opinion that a general law can be made applicable in the case under consideration and that, consequently, the passage of a local or special act is prohibited by the constitution.

The question of whether or not the county has authority to raise money by taxation to be expended in purchasing lands to be used for holding agricultural fairs presents the question of whether or not the purpose for which the money is to be expended is a public or private purpose. In

Weismer v. Douglass, 64 N. Y. 99,

the court said:

"It is a general rule that the legitimate object of raising money for taxation is for public purposes and the proper needs of government, general and local, state and municipal. When we come to ask in any case what is a public purpose, the answer is not always ready or easily to be found. It is to be conceded that no pinched or meagre sense may be put upon the words, and that if the purpose designated by the legislature lies so near the border line as that it may be doubtful on which

side of it it is domiciled, the courts may not set their judgment against that of the law makers."

An examination of the statutes of the state (Section 5947 C. L. et seq.) shows that since 1849 the board of supervisors of any county has had authority to raise money by taxation to be expended under the supervision of the board for the benefit of societies which may be established in the county for the encouragement and advancement of agriculture, manufactures and mechanic arts. A number of cases will be found in the reports relating to the validity of proceedings taken with reference to the levy and collection of the tax for this purpose and in none of them does the constitutionality of taxation for this purpose appear to have been questioned. Similar acts have been passed in many other states and the supreme court of Nebraska has held that taxation of this character is for a public purpose.

State v. Robinson, 35 Neb. 401.

In addition to this the state has, on several occasions, appropriated public funds for the purpose of exhibiting the resources of the state at various fairs and exhibitions throughout the United States. In view of the policy of the state with reference to the raising of money by taxation for this purpose, I am not prepared to say that the courts would hold an act of the character of the one here in question to be unconstitutional.

Respectfully yours
JNO. E. BIRD,
Attorney General.

BOARD OF SUPERVISORS. Not limited to one adjourned session a year but such adjourned sessions must not be so close together as to in reality amount to one continuous session. Supervisors will not be entitled to pay for attendance at the second adjourned session if at the first adjourned session they had drawn pay for six days.

February 5, 1909.

Mr. James S. Parker, Prosecuting Attorney, Flint, Michigan:

Dear Sir—I am in receipt of your communication of recent date and have noted the contents thereof, and in reply to your inquiry would say that it is the opinion of this department that the board of supervisors is not limited under the statute, Act 237 Public Acts 1905, to one adjourned session a year. However, such sessions must not be so close together as to in reality amount to one continuous session. If the adjourned sessions are so close together as to in reality amount to one continuous session, I believe the courts would hold that such an adjournment was taken solely to evade the law and that the members of the board of supervisors would not be entitled to pay for attendance at the second adjourned session, if at the first adjourned session they had drawn pay for six days.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

TOWNSHIP BOARD—TOWNSHIP TREASURER. The board has authority to appoint township treasurer in case of vacancy.
JUSTICES OF THE PEACE'S DOCKETS, ETC.—course to pursue to collect judgments, in case dockets, etc., have been destroyed.

February 5, 1909.

Mr. C. F. Chatfield, Long Rapids, Michigan.

Dear Sir—I am in receipt of your communication in which you inquire if the township board has authority to appoint a township treasurer to fill vacancy. In reply thereto would say that the township board is the proper authority under the statute to fill a vacancy existing in the office of township treasurer.

In regard to the loss by fire of the justice of the peace's dockets and records which contained a number of judgments, would say that probably the best course to pursue in order to collect the judgments would be to sue upon the old judgment and have a new judgment entered thereon.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

CITIES—INTOXICATING LIQUORS. Under special charter authorizing ordinances regulating and restricting number of saloons, council may limit them to prescribed district.

February 5, 1909.

Mr. G. I. Thompson, Hudson, Michigan:

Dear Sir—I am in receipt of your letter of the 25th ultimo in which you ask whether a special act could be passed giving the common council of the city of Hudson authority to limit the number of saloons therein, and also requesting to know whether, if this cannot be done, there is any other method by which the number of saloons can be limited.

In reply to your first inquiry would say that this Department has given an opinion to the effect that amendments cannot be made to city charters till the Legislature has prescribed the machinery for carrying into effect the so-called home rule provision in the revised constitution. For that reason no special act could be passed to amend your city charter at the present time.

Sub. 7 of Section 1 of Chapter 11 of your city charter gives the common council authority:

"to regulate, prohibit and suppress ale, beer, and porter houses, and all places of resort for tippling and intemperance, and to punish the keepers thereof, and all persons assisting in carrying on the business thereof; and to require all such places to be closed on the Sabbath day, and upon such other days and during such hours of every night as the common council shall prescribe;"

Sub. 15 of the same section gives the common council authority "to

regulate and license all taverns and houses of public entertainments; all saloons, restaurants and eating houses."

From the language used in the above subdivisions we are inclined to the view that the common council would have authority to pass an ordinance restricting the number of saloons to a specified number and would also have the right to pass an ordinance prescribing the district within the city where saloons might be located.

By reason of a peculiar constitutional question arising under your charter, which it is unnecessary to discuss, I regard it as extremely doubtful whether the city would have the right to require liquor dealers to take out an additional city license and pay an additional license fee therefor as is being done in many municipalities.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

VILLAGES. Doubtful if village has right to accept gift of building to be maintained by village and leased for private entertainments.

February 5, 1909.

Mr. Vernon Allen, Morenci, Michigan:

Dear Sir—I have had under consideration your letter of the 20th ultimo in which you make certain inquiries relative to the legality of the transfer of the "Stair Auditorium" to the village of Morenci.

In reply thereto will say that as I understand the facts the village offices are not to be located in this building, but that it is to be used solely as an assembly room for conventions, theaters and other public entertainments for which a rental will be received by the municipality. This being the case, the facts do not come within the rule of law which would permit a municipality to lease extra space in its public buildings to private individuals for private purposes, etc. I regard it as doubtful whether the village would have the legal right to accept the deed of this property and maintain it at the expense of the village for the purpose of leasing or donating its use for entertainments under private auspices. The method suggested by you of organizing a company composed of the contributors, who would control and operate the building in accordance with the purpose of the donors, would seem to me to be the safest way to avoid legal complications.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CRIMINAL LAW—SENTENCE. Female convicted of any crime other than murder should be sentenced directly to the Detroit House of Correction, under Sec. 2176, C. L. 1897.

Warden of the Michigan State Prison at Jackson, should refuse to receive female convicted of crime other than murder and sentenced to Jackson prison, but should return the prisoner to the trial court for sentence to the Detroit House of Correction, under Sec. 2176, C. L. 1897.

February 5, 1909.

Hon. Fred M. Warner, Governor, "Capitol," Lansing:

Dear Sir—Replying to your oral request for an opinion upon the question of whether or not it is the duty of the warden of the Jackson prison to receive and detain at that institution a female convicted of a crime other than murder and sentenced by the trial court to imprisonment in the Jackson prison, would say that Section 2176 C. L. 1897 provides as follows:

"That hereafter, whenever any female shall, in any court of the state of Michigan, be convicted of any crime or offense, except murder, which would under the existing laws of this state subject her to confinement in the state prison, that the court, by or before whom she shall be so convicted, shall sentence her to confinement in the Detroit house of correction, instead of the state prison, for such term as the said court shall deem just; and it shall be the duty of the superintendent of said house of correction to receive and securely keep all females so convicted, sentenced and committed to said house of correction, until the term of her or their sentence has expired, or until she or they are otherwise duly discharged by law or competent authority."

This section forms a part of an act passed by the Legislature in 1867 as supplementary to the act of 1861 which established the Detroit House of Correction. I have been unable to find that any changes were made in this section of the statute since its enactment. In 1892 the supreme court in the case of

Hursley v. Aud. Gen., 90 Mich. 439,

said that this section of the statute was mandatory; that the prisoners sentenced under that statute were state prisoners and that the Detroit House of Correction was made, for their confinement, a state prison.

The effect of this statute was to amend by implication certain statutes prescribing the punishment for crimes and to make all crimes, except murder, when committed by females punishable by imprisonment in the Detroit House of Correction instead of the state prison.

I am unable to see how in view of this statute a female convicted of a crime other than murder may lawfully be sentenced to the state prison at Jackson. It may perhaps be contended that this section is superseded by the general law (Act 118 of 1893) revising the laws relating to the several state prisons, Section 29 of which (Section 2108 C. L.) provides, in part, that:

"Courts of criminal jurisdiction . . . . may sentence to the state prison at Jackson any person over the age of fifteen years, duly con-

victed of any crime punishable by imprisonment in the state prison, as the court shall deem best."

but this provision does not in my judgment apply, for the reason that prior to the enactment of the same all crimes, except murder, committed by females were not punishable by imprisonment in the state prison at Jackson, but were punishable by imprisonment in the Detroit House of Correction. Moreover, this general law purports to revise only the laws relating to the state prison at Jackson, the Upper Peninsula Prison and the Ionia Reformatory, so that I do not think it could be contended that by any possibility the provisions of this act operated to repeal Section 2176 C. L., requiring courts to sentence females convicted of crimes other than murder to the Detroit House of Correction.

As to the duty of the warden when application is made to him to receive a female prisoner sentenced to the Jackson prison, would say that I understand it has heretofore been the practice to receive such females at the Jackson prison and to thereafter transfer them to the Detroit House of Correction. This, in my judgment is not the proper practice. The sentence in such case is an illegal sentence and should be immediately corrected by the trial court imposing a legal sentence to the Detroit House of Correction. This the trial court has authority to do under the decision of the supreme court in the case of

People v. Farrell, 146 Mich. 264.

It is my opinion, therefore, that the warden of the Jackson prison should not receive in that institution any female convicted of a crime other than murder and sentenced to that institution, but that the prisoner should be returned to the trial court that the sentence may be corrected by the imposition of a legal sentence.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

BOARD OF SUPERVISORS—BORROWING MONEY FOR CURRENT EXPENSES. The board of supervisors has no authority to borrow money for current expenses and other charges against the county but must raise the amount necessary by taxation.

February 5, 1909.

Mr. H. W. Davis, Baldwin, Michigan:

Dear Sir—I am in receipt of your letter of the 3rd inst., in which you state that Lake county, because of failure of one of its largest taxpayers to meet its taxes the past three years was deprived of one-fifth of the county tax temporarily, and was compelled to borrow $4,000.00, of which $2,000.00 has been paid and $2,000.00 is due March 1st; and that notes were given therefor and that it has since been claimed by some of the supervisors that the county had no authority to borrow this money. The loans were authorized by the board of supervisors at the regular October session. You request an opinion upon certain questions as to the legality of the loan and the power of the board of supervisors

at a special session to vote a special tax to meet the county indebtedness and borrow money in anticipation of the collection of such tax.

For reply thereto would say that I assume the money was borrowed for the purpose of providing for the current expenses and charges of the county. In the case of Supervisors v. Warren, 98 Mich. 144, the Supreme Court held that a board of supervisors had no power, under Sub. 10, Sec. 2484 C. L. 1897, to borrow the money necessary to defray current expenses and charges of the county; but that the same must be raised by taxation. In the recent case of McCurdy v. County of Shiawassee, decided November 30th, 1908, 154 Mich. 550, it appeared that the plaintiff loaned money to the county under authority of a resolution of the board of supervisors to meet the ordinary expenses of the county; a note was given therefor, on which interest was paid, and several renewal notes were later given. It was held that the notes were given without authority of law and were void, and that the county was not liable for the money so borrowed. In view of what is said by the Supreme Court in that case, which in principle can not be distinguished from the case under consideration, I am inclined to the opinion that Lake county would not be liable for the balance due upon this loan. This being true, I am unable to see how the matter can be adjusted by the board of supervisors under any existing provisions of the statutes. There is no provision authorizing the board to levy a special tax to meet an indebtedness of this character, and there is no provision authorizing the board to submit the question to the electors. Under the circumstances, the only way that relief can be had is through legislation providing for the submission to the electors of the question of legalizing the action of the board in making the loan, and authorizing its payment.

Respectfully,
JNO. E. BIRD,
Attorney General.

COUNTY AGENTS—JUVENILE COURT LAW. Fees of county agent under the Juvenile Court Law are $3 per day for services ordered by court, and actual expenses to be audited by Board of State Auditors.

February 5, 1909.

Board of State Auditors, Capitol, Lansing:

Gentlemen—In reference to the enclosed claim of Andrew J. Dole, Agent of the board of corrections and charities for the county of Antrim, for services performed under Act No. 6 of the Public Acts of 1907, Extra Session; would say that Section 4 of the said act contains the following provision.

"The said agent shall receive as compensation for his services under this act, his necessary official expenses, together with the sum of three dollars in full for each day ordered by the court, the superintendent of any state institution, or the state board of corrections and charities, and not exceeding three dollars for any one day's service, which shall be audited by the board of state auditors and paid from the general fund.

. . . . and when such service shall be ordered by the court, the amount thereof shall be certified by the court ordering such service."

The agent, therefore, is entitled to three dollars per day for each day's service under said act when the services in question were ordered by the court, and his necessary official expenses incurred in the performance of such service, all of which is to be audited by the board of state auditors and paid from the general fund.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

STATE PRINTERS. Memorial volumes ordered by legislature must be printed by state printers.

LEGISLATURE—MEMBERS OF. Not entitled to extra compensation for supervising publication of memorial volume.

February 5, 1909.

Board of State Auditors, Capitol, Lansing:

Gentlemen—I have had under consideration the bill for $841.50 of Richmond & Backus Company, Detroit, for printing and binding the Alger Memorials authorized by Concurrent Resolution of the Legislature of 1907; also the bill of J. Edward Bland, Chairman of the Alger Memorial Committee appointed pursuant to this resolution, for $100.00 for services in editing and supervising the publication of the Memorial and for additional expense incurred in the publication.

In reply thereto will say that this Department held, in an opinion to the Hon. Joseph Greusel, under date of February 6, 1908, that the printing of this volume must be done by the State printer under the contract with the state. I enclose you a copy of this opinion. For the reasons therein stated, I am of the opinion that the bill of the Richmond & Backus Company for printing and binding the Alger Memorial volume can not be allowed by your board.

In reference to the bill of J. Edward Bland for services in editing and supervising the publication of the Memorial volume, will say that it appears from the letter of Mr. Bland and the records of the Legislature that these services were performed by him in his capacity as a member of the committee appointed by the Legislature of which he was a member.

Section 15, Article IV of the old Constitution, under which these services were performed, prescribes the compensation of members of the Legislature, and further provides that members "shall not receive at the expense of the state books, newspapers or other perquisites of office not expressly authorized by this constitution."

The services performed by Mr. Bland in editing and supervising the publication of the Alger Memorial were certainly germane to his duties as a member of the state Legislature, and we think the facts come squarely within the case of Warner v. Auditor General, 129 Mich. 648. We are therefore of the opinion that the Board of Auditors has no right

to allow any compensation to Mr. Bland for his services in editing and supervising the publication of the Alger Memorial.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—CITIES AND VILLAGES. Revised constitution requires legislature to enact one general law for incorporation of cities, and one general law for incorporation of villages.

February 11, 1909.

Hon. Walter R. Taylor, State Senator, Capitol, Lansing:

Dear Sir—I have examined the bill enclosed in your letter of the 10th inst. in the light of the questions submitted by you, relative to its constitutionality, and in reply will say that Section 20 of Article VIII of the Revised Constitution provides:

"The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts."

Section 21 of the same article provides that:

"Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state."

Sections 23, 24 and 25 of the same article contain further limitations upon the powers of municipalities.

It will be noted from the above sections that it is contemplated:

First, that there shall be but one general law for the incorporation of cities and one general law for the incorporation of villages.

Second, that such law shall make provision for carrying out the regulations and restrictions mentioned in Sections 21 to 25 of Article VIII inclusive.

Third, that it is not contemplated that one general law shall cover the incorporation of both villages and cities.

The bill submitted by you contemplates a special act of incorporation for each village and city coming within its provisions, in that it provides in Section 3 for "the passage of a special act providing for such incorporation, consolidation or change," and in Section 9 makes further provision for a special act relating to the assumption of indebtedness.

It is clear that under the terms of the bill you have submitted the Legislature can provide an entirely different act of incorporation in the case of every municipality seeking to come within its terms. The bill submitted by you does not attempt to embrace the provisions contemplated by Sections 21 to 25 of Article VIII of the Revised Constitution. It would, therefore, make it necessary, in order to give effect to

these sections, that the Legislature pass another act prescribing the machinery for carrying into effect those provisions.

It is my opinion that the intent of the Constitutional Convention as expressed in the revised constitution, was that these provisions should be contained in one general act for the incorporation of villages and one general act for the incorporation of cities. I am, therefore, of the opinion that the bill submitted by you does not comply with the mandates of the Revised Constitution, and if enacted into law would be declared unconstitutional by the courts.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—JUDICIAL POWER—CITIES. Legislature cannot delegate to cities power to create court and prescribe its jurisdiction.

February 12, 1909.

Hon. Walter R. Taylor, State Senator, Capitol, Lansing:

Dear Sir—I have examined your proposed Section 25, providing that cities may create courts for enforcement of ordinances, investing them with civil and criminal jurisdiction of justices of the peace, etc.

In reply thereto will say that Section 1 of Article VII of the Revised Constitution provides:

"The judicial power shall be vested in one supreme court, circuit courts, probate courts, justices of the peace and such other courts of civil and criminal jurisdiction, inferior to the supreme court, as the legislature may establish by general law, by a two-thirds vote of the members elected to each house."

I am of opinion that the provision contained in Section 25 submitted by you is in violation of this constitutional provision, in that it delegates to the city the power of creating a court and prescribing its jurisdiction.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAWS. Candidate for office at a village election, would have no right to act as an inspector of election.

March 2, 1909.

Mr. B. E. Coburn, Perry, Michigan:

Sir—I have your communication of March 2nd, in which you ask whether it is illegal for a candidate to sit as a member of the election board.

In reply thereto would say, it is assumed that you refer to a village election. Section 3658 of the Compiled Laws of 1897 provides:

"That all elections held in the various cities, villages and townships in this state shall be in conformity with the provisions of the laws governing general elections so far as the same shall be applicable thereto, and all provisions relative to the boards of election inspectors, the arrangement of polling places, the manner of voting and receiving votes and the canvass and declaration of the result of such election are hereby made applicable to such municipal and township elections, but the time for the opening and closing of the polls shall not be affected thereby."

See also Section 3593 Compiled Laws of 1897.

Section 3612 of the Compiled Laws of 1897, which is one section of the general election law of this state, provides in part:

"That no person shall act as such inspector, who is a candidate for any office to be elected by ballot, at said election."

It was the evident intent of the Legislature in the passage of the village election law to make all provisions of the general election law applicable, except where the contrary was expressly stated. At all elections at which any presidential elector, member of congress, member of the Legislature, city or county officer, or circuit judge is to be elected, a candidate for office cannot act as an inspector of election. Section 3612 Compiled Laws 1897.

It is, therefore, my opinion that a candidate for office at a village election would have no right or authority to act as an inspector of election.

Very respectfully,

JNO. E. BIRD,

Attorney General.

BANKING LAW—RECEIVERS ASSESSMENT OF STOCKHOLDERS. Under general banking law stockholders may not be assessed for amount not paid by other stockholders on assessment, in addition to their pro rate share of liability.

March 3, 1909.

Mr. J. Murray Benjamin, Receiver, White Pigeon, Michigan:

Dear Sir—I am in receipt of your letter of the 2nd inst., relative to the basis of assessment against stockholders of a state bank under Section 6135 Compiled Laws, where a portion of a prior assessment has not been paid by reason of the insolvency of certain stockholders.

Section 6135 Compiled Laws provides:

"The stockholders of every bank shall be individually liable, equally and ratably, and not one for another, for the benefit of the depositors in said bank to the amount of their stock at the par value thereof, in addition to the said stock. . . ."

The language of this section, "shall be individually liable, equally and ratably, and not one for another, is identical with that contained in the National banking law. This language was construed by the United States Supreme Court in the case of United States v. Knox, 102 U. S. 422. The facts in this case were, in substance, identical with the facts submitted by you, and the court said:

"By the common law, the individual property of the stockholders was not liable for the debts of the corporation under any circumstances. Here the liability exists by virtue of the statute and the assent of the corporators to its provisions, given by the contract which they entered into with Congress in accepting the charter. With respect to the character of that liability, it is entirely clear from the language employed in creating it, that it is several and can not be made joint, and that the shareholders were not intended to be put in the relation of guarantors or sureties, 'one for another,' as to the amount which each might be required to pay.

In the process to be pursued to fix the amount of the separate liability of each of the shareholders, it is necessary to ascertain (1), the whole amount of the par value of all the stock held by all the shareholders; (2), the amount of the deficit to be paid after exhausting all the assets of the bank; (3), then to apply the rule that each shareholder shall contribute such sum as will bear the same proportion to the whole amount of the deficit as his stock bears to the whole amount of the capital stock of the bank at its par value. There is a limitation of this liability. It can not in the aggregate exceed the entire amount of the par value of all the stock.

The insolvency of one stockholder, or his being beyond the jurisdiction of the court, does not in any wise affect the liability of another; and if the bank itself, in such cases, holds any of its stock, it is regarded in all respects as if such stock were in the hands of a natural person, and the extent of the several liability of the other stockholders is computed accordingly. Crease v. Babcock, 10 Met. (Mass.) 525."

For other cases to the same effect, see Atwood v. R. I. Agricultural Bank, 1 R. I. 376; In the Matter of the Hollister Bank, 27 N. Y. 393; Adkins v. Thornton, 19 Ga. 325; Robinson v. Lane, 19 Ga. 337; Wiswell v. Starr, 48 Me. 401; Herrick v. Wardwell, 58 Ohio St. 299, 50 N. E. 903. See, also, 5 Cyc. 447, note 33.

While there are cases holding to the rule that stockholders may be held to the full value of their stock, if need be to satisfy the indebtedness not paid through the failure of other stockholders to pay their proportions, it will be found upon an examination of these cases that the conclusion is reached by reason of the peculiar language contained in the statute. This distinction is very clearly pointed out in the case of Rehbein, et at. v. Rahr, et al., 85 N. W. 315. In this case the authorities upon both sides of the proposition were discussed by the court.

We find no case where the language used in the statute is similar to that in Section 6135 Compiled Laws, in which it has been held that any additional liability could be enforced against the solvent stockholders by reason of the insolvency of others. I am, therefore, of the opinion that in establishing the basis for an additional assessment, you have no right to add to the amount to be assessed such amounts as remain uncollected upon the previous assessments.

Very respectfully yours,

JNO. E. BIRD,

Attorney General.

CORPORATION LAW—SECRETARY OF STATE. Articles of association restricting right to exercise certain powers should not be filed by secretary of state.

March 3, 1909.

Hon. Frederick C. Martindale, Secretary of State, "Capitol," Lansing:

Dear Sir—I am in receipt of your letter of the fourteenth of January, enclosing proposed clauses for articles of incorporation offered for record under the provisions of Act 232, Public Acts of 1903, and requesting the opinion of this Department as to whether articles of association containing these clauses should be received.

The proposed articles are as follows:

"ARTICLE X. This corporation shall have no power to sell the invention mentioned in Article VII hereof, or letters patent to be issued thereon, or any interest therein, or license any other person or corporation to manufacture, sell or use the said instrument, device or invention without, in every instance, the consent in writing of two-thirds in interest of the capital stock of this company."

"ARTICLE XI. This corporation shall have no power to mortgage or pledge any of its assets without the consent in writing of two-thirds in interest of its capital stock."

"ARTICLE XII. This corporation shall have no power to incur any debt or debts which in the aggregate shall exceed two thousand five hundred dollars, without the consent in writing of two-thirds in interest of its capital stock."

It is provided in Section 2 of Act 232, Public Acts of 1903, after prescribing what must be contained in the articles of incorporation, that:

"The articles of incorporation, besides defining the purposes for which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stock and stockholders: Provided, The same may be not inconsistent with this act, or the general statutes of this State regulating corporations."

Section 10 of the same act provides:

"A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote."

It appears from the above: First, That the time prescribed for the transaction of corporate business by the stockholders is at a corporate meeting regularly called; Second, That at such a meeting this business may be transacted by "stockholders holding a majority of the stock." It seems to me that the purpose in the enactment of Act 232, Public Acts of 1903, was to secure a prescribed and uniform procedure for the conduct

of the affairs of corporations organized under it so that persons dealing with such corporations could not only determine what the powers of the corporation were but how those powers might lawfully be exercised. It is the general rule that the charter of the corporation is the measure of its powers and that the certificate of incorporation under a general act cannot legally contain any powers, restrictions or provisions except those called for by the statute.

Cook on Corporations, 6th Ed., Section 4.

The language contained in Section 2 of Act 232 above quoted was undoubtedly intended to relieve in some degree the strictness of this rule. It seems to me, however, that the test to determine whether a clause is admissible under this provision is whether it is a mere regulation of the method of transacting business, or whether it amounts to a restriction upon the method of transacting business laid down in the statute. In the case submitted by you, if the stockholders desired to dispose of the property of the corporation therein mentioned or any interest in it, or if it desired to mortgage or pledge its assets or incur an indebtedness beyond the amount therein limited, this could not be done by a vote of the stockholders in the manner precribed by statute, but in addition to this vote it would be necessary to secure the consent in writing of two-thirds in interest of the capital stock. To my mind this is a restraint upon the exercise of the corporate powers in the manner laid down in the statute and is something more than a mere regulation. It purports to require, before certain business can be transacted, a form of action by the stockholders not recognized by the statute and places an additional condition precedent to the transaction of the corporate business. There are numerous cases holding that such provisions are not permissible.

State ex rel. Ross v. Anderson, 67 N. E. 207, 31 Ind. App. 34.
People ex rel. Barney v. Whalen, 104 N. Y. Sup. 555,
Lincoln Building & Savings Ass'n v. Graham, 7 Neb. 173,
Brewster v. Hartley, 37 Cal. 15,
Audenreid v. East Coast Milling Co., 59 Atlantic 527,
People v. Philips, 1 Denio 388,
Brinkeroff Trust & Savings Co. v. Home Lumber Co., 118 Mo. 447.

Some of the above cases relate to by-laws restricting the exercise of corporate powers. In view of the above I am of the opinion that the proposed clauses contain such a restriction upon the exercise of the corporate powers as authorized by the provisions of Act 232, Public Acts of 1903, as to render them illegal, and for that reason the articles should be refused.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

BUILDING AND LOAN ASSOCIATION LAW. There being no statutory authority for making loans upon leased land, associations have no right to do so.

March 3, 1909.

Mr. D. W. Tussing, Suite 14 Dodge Blk., Lansing, Michigan:

Dear Sir—I have your communication of March 1st, in which you ask: "Is it permissible, under the statutes of Michigan, for a building and loan association to lend money on the real estate vested in a ninety-nine year lease, renewable, for the purpose of erecting thereon a business block?

In reply thereto would say, my attention has not been called to any provision in the statute governing building and loan associations authorizing a loan upon leased land. It is impossible for the lessee to give to the building and loan association such security as is required, as the interest of the lessee is a chattel real. Sec. 8787 C. L. 1897. In the absence of express authority in the statute, a building and loan association would have no authority to make such loan.

Very respectfully,
JNO. E. BIRD,
Attorney General.

MICHIGAN ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS. A member of this association may place words on his letter heads to this effect, etc., and the qualifications for membership therein is a matter for the association only.

March 4, 1909.

Mr. D. W. Springer, Ann Arbor, Michigan:

Dear Sir—In response to your communication in which you submit certain inquiries relative to the application of Act 92 of the Public Acts of 1905 providing for a board of accountancy and the issuance of certificates to persons who passed the examination before such board, would say the statute providing for the board of accountancy does not seek to prohibit persons engaging in the practice of accountancy who have not passed the board's examination or received a certificate from it. In this respect it differs from the medical, dental, barber and veterinary laws. The offense laid down in the statute and made punishable by Section 6 is for holding one's self out to be a "certified public accountant." The Michigan Association of Certified Public Accountants has nothing to do with the State Board and we do not think that it would be a violation of Section 6 of the accountancy law for a person to place upon his letter-heads or business cards a statement that he is a "Fellow Michigan Association of Certified Public Accountants" or a "member" of the same, nor would it be an offense for him to hang in his office or home his certificate of membership in the Association. The matter of retaining or excluding persons as members of the Michigan Association of Certified Public Accountants who have not passed the State Board

examination and received their certificates is a matter relating to the internal affairs of the Association and about which this Department could not advise. The Association will be entitled to make such regulations regarding admission to membership and exclusion therefrom as might be deemed advisable under the provisions of its charter.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW—TELEPHONE AND TELEGRAPH COMPANY, cannot be admitted to do a telephone business in Michigan as our laws require separate incorporation of telephone and telegraph companies.

March 12, 1909.

Hon. A. C. Angell, Union Trust Bldg., Detroit Michigan:

Dear Sir—I have given some attention to the matter of the application of the American Telephone and Telegraph Company to be admitted to do a telephone business in this state. This company is organized under the telegraph statute of New York, and was organized prior to the enactment of the statute providing for the incorporation of telephone companies. It now seeks to be admitted to do a telephone business in the state of Michigan, claiming that the courts of the state of New York have recognized its right to do a telephone business under its charter in that state.

While we do not question the decisions of the courts that hold that there is no such difference between the telephone and telegraph business that the telephone business is prohibited under a law providing for the organization of telegraph companies, where there has been no separate law providing for the organization of telephone companies, or even those decisions which hold that corporations organized under the telegraph law before a telephone law was enacted retain their powers to do a telephone business as granted by the law of their organization; we think the question of permitting a telegraph company to do a telephone business in the state of Michigan under the provisions of our foreign corporation law presents a somewhat different problem.

The Legislature of this state has recognized a vital distinction between telegraph and telephone companies, in that it has laid down different statutory provisions governing their organization and the conduct of their business. Under our statute it is manifest that the same corporation could not engage in both lines of business. Your contention would require us to hold that while a domestic corporation could not engage in both the telegraph and telephone business in this state, yet if application should be made by a foreign corporation, organized under a law such as that of New York, for admission to do a telegraph business and a telephone business and the secretary of state would be obliged to grant such authority, thus extending the power of a foreign corporation beyond what could be granted to a domestic corporation. We do not

believe that this was the intention of the Legislature in enacting the foreign corporation law.

We have, therefore, directed the secretary of state to refuse to grant a certificate of authority to the American Telephone and Telegraph Company to conduct a telephone business within this state.

Very repectfully yours,
JNO. E. BIRD,
Attorney General.

TAX LAW—TELEPHONE AND TELEGRAPH COMPANIES. There is not enough difference in the operation of the business to justify a different classification for the purpose of taxation.

March 17, 1909.

Hon. Guy A. Miller, House of Representatives, "Capitol," Lansing:

My dear Sir—I am in receipt of yours of March eleventh making inquiry as to whether in my opinion it would be competent to separate telephone companies from telegraph companies for the purposes of taxation.

This same suggestion was made at the last session and I examined the question at some length and satisfied myself that no difference or other class for the purpose of taxation could be made for these two properties. My opinion is that there is not difference enough in the construction of a plant or the operation of the business to justify a different classification for the purpose of taxation. Both erect poles, string wires and are in the business of transmitting messages from one point to another by wire. The only difference is in the method of transmission, and that is too slight to make a difference which would justify a different classification.

Very truly yours,
JNO. E. BIRD,
Attorney General.

RAILROAD LAW—FREIGHT RATES. When a railroad company charges less than the statutory rate and subsequently increases that charge to an amount which does not exceed the statutory rate, the railroad commission has no jurisdiction over the matter, provided there is no discrimination between shippers.

March 17, 1909.

Hon. Louis C. Cramton, Chairman, Committee on Railroads, House of Representatives, "Capitol."

Dear Sir—Your letter of the eleventh instant duly received in which you refer to the statute fixing a rate of $8.00 for the transportation of freight by the car under certain conditions for a certain distance, and

ask whether or not, when a railroad company charges less than the statutory rate and subsequently increases that charge to an amount which does not exceed the statutory rate, the railroad commission, on complaint being made, would have any jurisdiction to determine whether the increased rate was reasonable or unreasonable.

For answer thereto would say that where a rate is fixed by statute the railroad commission has no jurisdiction over the matter provided there is no discrimination between shippers. The rate fixed by the Legislature is supposed to represent the reasonable maximum rate and the railroads are entitled to charge that amount if they see fit. The railroad commission act applies to the transportation of persons as well as property. The Legislature has fixed the maximum rate for the transportation of persons at two cents a mile. It would be just as logical to say that where a railroad company had made a rate of a cent a mile for the transportation of passengers between competing points and should afterward see fit to charge the rate of two cents a mile prescribed by the statute, the railroad commission would have jurisdiction to determine whether the increase was reasonable, as it would to say they had jurisdiction in the case you have in mind.

I think it is clear that where the Legislature fixes the rate the commission has no duty to perform in the matter other than perhaps to see that unreasonable discrimination is not permitted.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—"LOCAL ACT." Under the constitution of 1908, the Legislature cannot pass a special or local act authorizing the city of Grand Rapids to issue bonds for the purpose of building a new auditorium for the city.

March 17, 1909.

Mr. H. B. Stitt, Managing Editor "The Evening Press," Grand Rapids, Michigan:

Dear Sir—In reply to your request through Mr. Tinkham for an opinion as to the power of the Legislature under the revised constitution by special act to authorize the city of Grand Rapids to issue bonds in the sum of $250,000 for the purpose of building a new auditorium for the city, I desire to say, Section 30 of Art. IV of the revised constitution reads as follows:

"The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

Section 20 and 21 of Art. VIII read as follows:

"Section 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of

villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts."

"Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state."

The purpose of these provisions of the constitution and their relation to each other is indicated by what is said in the notes to these sections made by the committee of the constitutional convention on Submission and Address to the People, whose report was adopted unaminously by the convention and to which, in construing the constitution, I think we are authorized to refer under the decision in:

Coffin v. Bd. of Election Com'rs, 97 Mich. 188, 197.

In the notes to Section 30 of Art. IV the committee said, after calling attention to the large number of local and special bills passed by the last Legislature:

"The time devoted to the consideration of these measures and the time required in their passage through the two houses imposed a serious burden upon the state. This section, taken in connection with the increased powers of local self-government granted to cities and villages in the revision, seeks to effectively remedy such condition."

In the notes to the provision relating to cities and villages the committee said:

"The purpose is to invest the legislature with power to enact into law such broad general principles relative to organization and administration as are or may be common to all cities and all villages, each city being left to frame, adopt and amend those charter provisions which have reference to their local concerns. The most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best able to provide for its local necessities; that inasmuch as special charters and their amendments are now of local origin, the state legislature will become much more efficient and its terms much shorter if the labor of passing upon the great mass of detail incident to municipal affairs is taken from that body and given into the hands of the people primarily interested.

Under these provisions, cities and villages, as under the constitution of 1850, will remain subject to the constitution and all the general laws of the state."

It seems to me that legislation of the character of that proposed is precisely such legislation as these provisions of the constitution were designed to prohibit. It evidently was the intention that cities and villages should themselves be permitted to legislate upon all matters of local concern without interference on the part of the Legislature except through the medium of general laws applicable to all cities and subject, of course, to the restrictions and limitations imposed by the constitution. This, of necessity, precludes the Legislature from enacting special laws confined in their operation to a particular city or cities as to matters which may properly be said to be purely matters of local municipal

concern. It is my judgment that the proposed legislation falls clearly within this class.

Without, therefore, at this time passing upon the question of the right of a city in any case to construct and maintain an auditorium or to raise money by taxation for that purpose, I am of opinion that the proposed legislation would, for the reasons heretofore stated, be held unconstitutional.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

TAX LAW—UNPAID TAXES UPON PROPERTY PURCHASED BY COLLEGE. Taxes became due December first, 1906 on the Hubbell Homestead, which was purchased by the Michigan College of Mines, November 10, 1906, and under the circumstances the college must pay the taxes to protect the title to the property.

March 18, 1909.

Mr. F. W. McNair, President, Michigan College of Mines, Houghton, Michigan:

Dear Sir—I have your communication of March 10th, enclosing copy of letter of John G. Stone to yourself, relative to the unpaid taxes upon the Hubbell Homestead, which has been sold to your institution. It is understood from these communications that the deed to this property was executed to the State of Michigan and delivered on November 10, 1906. That such property is now advertised for sale for the delinquent taxes for the year 1906; such taxes being township taxes, which include the state, county, township, highway and school taxes assessed.

In reply thereto would say, it is assumed that there is no provision in the deed making it the duty of the grantor to pay all of the taxes assessed for the year 1906. In the absence of any such express provision, it is not the duty of the grantor to pay such taxes as were not a lien at the date of execution of the deed. The purchase being made, or the deed at least being executed on November 10th, the taxes in question would not become a lien until December 1st. It will be necessary for your institution to pay the amount of tax in question against such property in order to protect the title.

This matter is largely controlled by the case of Iron Mountain Public Schools vs. O'Connor, 143 Mich. 35. In that case the public schools of the city of Iron Mountain purchased a site for school purposes. The supervisor listed the property upon the assessment roll in April, and the board of review approved the roll and returned to the board of supervisors for equalization during the latter part of May. On July 1, 1901, the lot was purchased. It was subsequently returned delinquent and sold at the annual tax sale. Upon petition filed to vacate and set aside the decree rendered in the suit brought by the auditor general for the foreclosure of tax liens and to cancel and set aside the deed made upon the sale to the respondent, the court held that it was the duty of the school district to pay the tax, on the ground that no power is lodged

in any officer or board to take from or add to the assessment roll after the township board of review has passed upon and approved same. The same rule is applicable in this case.

A similar question arose in regard to certain property recently purchased by the board of education for the Mt. Pleasant Normal School, and it was necessary for the board to pay the amount of tax and receive from the purchaser of the title at the tax sale a quit claim deed of the property.

The tax in question can be paid either to the county treasurer of your county or to the auditor general at any time prior to the sale of the property. As heretofore indicated, it will be necessary to follow this course, if the title of the State is to be protected.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTIONAL LAW—RIGHT OF WOMEN TO VOTE. Under section four of Article three of the Revised Constitution, women having the qualifications therein specified may vote upon questions involving the direct expenditure of money or the issue of bonds, and this right can be exercised under the existing laws of the state without further legislation.

March 18, 1909.

Hon. E. O. Shaw, Newaygo, Michigan:

Dear Sir—In reply to your inquiry concerning the right of women, having the proper property qualifications, to vote upon the question of whether the sum of forty thousand dollars shall be raised by a county for the purpose of building county buildings; I would say that Section 4 of Article III of the Revised Constitution reads as follows:

"Whenever any question is submitted to a vote of the electors which involves the direct expenditure of money, or the issue of bonds, every woman having the qualifications of male electors, who has property assessed for taxes in any part of the district or territory to be affected by the result of such election, shall be entitled to vote thereon."

The question to be submitted is plainly a question upon which women are given the right to vote by this provision of the Constitution, and the only difficulty that presents itself is whether that right can be exercised under the existing laws providing for the submission of such questions to the electors.

The statute, Section 2484 C. L., provides that these questions shall be submitted to the electors of the county. The constitution provides that when these questions are submitted, women having the prescribed qualifications shall be entitled to vote thereon. Two classes of voters to whom the questions are to be submitted are thus provided for. If a question is submitted to one class of voters, and the other class denied the right to vote, it is exceedingly doubtful, in my judgment, whether the election would be valid.

See Attorney General v. Supervisors, 11 Mich. 63.

The result is that unless women can vote upon these questions, they can not be submitted to the people at all without further legislation upon the subject.

On the other hand, if it can be said that these questions can be submitted to the electors, and women denied the right to vote thereon until the Legislature makes provision for their voting; it would be possible for the Legislature, by refusing to make such provision to deny to women the exercises of a constitutional right.

The purpose of this provision of the constitution was to secure to women possessing the prescribed qualifications the right to vote upon these questions, and it should, if possible, be construed to effectuate that purpose.

I am unable to perceive any valid reason why women should be denied the right to vote upon these questions under the laws now in force. There is no applicable provision of law requiring women to register before voting upon these questions, and while the Legislature may undoubtedly require registration before the constitutional right may be exercised, its neglect or failure to do so will not deprive them of their right to vote without registration.

Stallcup v. Tacoma, 52 Am. St. Rep. 25.

All of the machinery necessary for conducting the election is provided for by law. The question is voted upon a separate ballot, and a separate ballot box is provided in which to deposit the votes cast.

I can see no practical difficulty that would deny to women the right to participate in the election upon these questions, and am of opinion that they are entitled to vote, if they possess the qualifications prescribed by the constitution.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—WATER POWER COMPANIES—RAILROAD COMMISSION. Legislature has the right to delegate to the Railroad Commission authority to regulate the business of water power companies.

BOARD OF SUPERVISORS. Determination of Board as to compensation for grant of water power privileges not reviewable in absence of fraud.

March 23, 1909.

Water Power Investigation Committee, Hon. D. Z. Curtiss, Chairman, House of Representatives, Capitol, Lansing, Michigan:

Gentlemen—I have given some attention to the matters submitted by you with reference to the authority of the state over water power companies and in reply thereto beg leave to submit that in my opinion the right of the state to regulate the business of water power companies is well established by the authorities and may be based upon at least two well recognized principles, viz.: that these companies are enjoying an exceptional use of public property and a public easement, viz., the pub-

lic waters of the state; and also that the business conducted by them is so affected with a public interest as to warrant state regulation and control of their operations.

Cooley's Constitutional Law, p. 259,
Freund's Police Power, Sec. 373,
Munn v. Ill., 94 U. S. 113,
Brass v. Stoesser, 153 U. S. 391,
Nash v. Page, 80 Ky. 535,
Central Union Telephone Co. v. State, 118 Ind. 194.

As to the regulation of rates and charges under the revised constitution will say that Section 7 of Article XII provides:

"The legislature may from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this state, and may pass laws establishing reasonable maximum rates of charges for the transportation of property by express companies in this state, and may delegate such power to fix reasonable maximum rates of charges for the transportation of freight by railroad companies and for the transportation of property by express companies to a commission created by law" etc.

While this provision was designed to give express authority to the Railroad Commission to regulate freight and express charges, it by no means follows that the regulation of the charges of other public utility corporations is impliedly prohibited. The constitution of this state is a limitation upon the power of the Legislature and the Legislature has jurisdiction to legislate upon all subjects on which legislation is not prohibited.

Cooley's Constitutional Limitations, 7 Ed. 241,
Atty. Gen. v. Preston, 56 Mich. 177,
State Tax Law cases, 45 Mich. 389,
People v. Lawrence, 54 Barb. 589.

I cannot see any reason, therefore, why the Legislature cannot delegate to the Railroad Commission by a proper statutory authority power to reasonably regulate the business of water power companies, including the regulation of rates.

Passing to the question of the right of the courts to review the decision of the board of supervisors made under the provisions of Section 14 of Article VIII of the revised constitution, will say that this article provides:

"No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. No such law shall preclude the state from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof."

It will be noted that under this constitutional provision the right to determine the compensation and prescribe the conditions connected with the grant is intrusted to the board of supervisors and it is well settled that where a board is intrusted with a discretion, this discretion will not be interfered with unless it is fraudulently exercised. I am, there-

fore, of the opinion that the action of the board of supervisors in determining what shall be reasonable compensation for a grant of water power privileges cannot be reviewed by the courts unless it can be affirmatively shown that the action of the board was fraudulent or that there was a gross abuse of discretion amounting to fraud.

28 Cyc. 882,
Megus v. City of Brooklyn, 62 How. Pr. 291,
Brush Electric Illuminating Co. v. Consolidated Telegraph and Electrical Subway Co., 15 N. Y. Supp. p. 81,
Alleghany City v. Railway, 159 Pa. St. 411.

Whatever difficulties there may be relative to the local taxation of these water power companies, could easily be remedied by restoring to the Tax Commission full power to review assessments.

Very respectfully submitted,
JNO. E. BIRD,
Attorney General.

MEDICAL LAWS. Sale of "Natural Sight Restorer" with a medicine prepared by the inventor would not be "practicing medicine without a license."

March 24, 1909.

Mr. W. N. Mills, Attorney at Law, Hammond Bldg., Detroit, Michigan:

Dear Sir—Relative to your inquiry as to whether the sale of the device known as the "Natural Sight Restorer," with a medicine prepared and compounded by Dr. McVoy, the inventor of the restorer, would be a violation of Sections 5279 et seq. C. L. 1897, and amendments thereto. I have given this matter consideration, and have been unable to determine how the sale of this device, with the medicine in question, in the manner indicated, could be said to be practicing medicine without a license so to do.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

INQUESTS. A coroner has no authority to hold an inquest unless a petition of five citizens is filed with him in accordance with section 11819 C. L. 1897.

Where it clearly appears that an inquest is instituted and held by a Justice of the Peace, merely for the purpose of enabling him to collect his fees therefor, the Board of Supervisors should refuse to audit his claim for such fees.

March 26, 1909.

Mr. John Jones, Attorney at Law, Ontonagon, Michigan:

Dear Sir—I have your letter of the 18th instant, in which you ask an opinion upon the questions: First, Whether a coroner is authorized to

hold an inquest without there having been filed with him the petition of five citizens of the township, city or village; and Second: Whether, when a justice of the peace holds an inquest pursuant to petition, the board of supervisors would be justified in refusing to allow his bill for fees and services, if it appeared that he circulated the petition himself and requested signatures to the same.

For reply to the first question, I would say that Chapter 329 of the compiled laws of 1897 (Secs. 11818 to 11828 C. L.) provides for the holding of inquests by justices of the peace. Section 11819 authorizes any justice of the peace to hold an inquest when, among other things, the petition of not less than five citizens of the township, city or village, any one of whom shall not be a constable or deputy sheriff, shall have been filed with him. Section 11832 C. L. authorizes any coroner to hold inquests anywhere within the county for which he shall be elected, and provides that *all* the provisions of law relating to the holding of inquests by justices of peace shall apply to inquests so held by coroners.

In view of this provision of the statute, I am of opinion that the provision of section 11819 relating to petitions applies to coroners as well as to justices of the peace.

With reference to the second question, I would say that I do not believe that the board would be justified in refusing to allow the bill of a justice of the peace for holding an inquest upon the ground alone that the justice circulated the petition and requested signatures to the same. However, if it should clearly appear that the circumstances did not warrant the holding of an inquest, and that the justice circulated the petition solely for the purpose of holding an inquest in order that he might collect the fees therefor, then I am of opinion that the board of supervisors would have authority to refuse to audit and allow the fees of the justice.

In the Am. & Eng. Ency. of Law, Vol. 7, p. 603-4, it is said:

"It is the duty of the coroner to hold an inquest whenever the circumstances surrounding a death are of such a character as to support a reasonable belief that it resulted from violence or other unlawful means. The decision of the question rests in the sound discretion of the coroner, and the presumption is that in holding an inquest he has acted in good faith and for sufficient cause. But the power is not one to be exercised capriciously or arbitrarily, and if an inquest has been held where there were no circumstances tending to show that death was due to an unnatural cause, it has been decided that the county cannot be compelled to pay the coroner for his services. But there are authorities holding that the coroner's action cannot be reviewed."

In what I have said, I do not wish to convey the impression that the board of supervisors may substitute its discretion for that of the justice of the peace as to the necessity for holding an inquest. But where it clearly appears that the inquest was instituted and held by the justice merely for the purpose of enabling him to collect his fees therefor, it is my opinion that the board of supervisors may reject his claim.

I do not now recall having had any conversation with any of the supervisors of the county upon these questions, although it is barely pos-

sible that it may have been discussed in a general way in connection with what talk we had about the fees of officers.

Very truly yours,
JNO. E. BIRD,
Attorney General.

PRISONERS—PAROLED PRISONERS. Paroled prisoners are in effect serving time and the statute (Sec. 2141, C. L. 1897) does not contemplate that they shall be supplied with money and clothes as "Discharged convicts."

March 31, 1909.

Mr. Otis Fuller, Warden, Michigan Reformatory, Ionia, Michigan:

Dear Sir—I am in receipt of your letter of the 15th inst., in which you ask whether or not the provisions of Section 2141 C. L. 1897 apply to prisoners released from prison upon parole. In reply I would say that Section 2141 C. L. reads as follows:

"When any convict shall be discharged from prison, by pardon or otherwise, the warden shall furnish such convict with clothing, if he be not already provided for, not exceeding ten dollars in value, and such sum of money, not exceeding ten dollars, as the warden may deem necessary and proper; and the board of the prison may, in its discretion, furnish such convict with a further sum of money, not exceeding fifteen dollars, whenever in the opinion of such board, the necessities of the convict are such as require the same: Provided, That instead of paying to a discharged convict the sum of ten dollars or under above allowed, the warden may, in his discretion, expend said money and allowance, or such portion thereof as may be necessary in paying the fare of said convict to his home, or place of destination, or to the state agent for discharged convicts."

Prisoners are paroled from prison under the provisions of Act 184 of the Public Acts of 1905, relating to indeterminate sentences; which provides in Section 6 that the governor or advisory board in the matter of pardons may in their discretion grant an application for a parole and issue a parole or permit to a prisoner to go at large without the enclosure of the prison, and that "the convict so paroled while at large by virtue of such parole shall be deemed to be still serving the sentence imposed upon him and shall be entitled to good time the same as if confined in prison." And in Section 8 that "every such convict while on parole shall remain in the legal custody and under control of the warden or superintendent of the prison from which he is paroled," etc. Section 11 of the act provides that that time for which the prisoner is to remain on parole shall be specified not exceeding four years, and that after a prisoner has faithfully performed all the obligations of his parole for the period of time fixed, he shall receive a certificate of final discharge from the warden or superintendent in whose custody he is.

It will be observed that Section 2141 refers in terms to a convict *discharged* from prison, and was evidently intended to apply only to convicts receiving a final discharge from the institution. A convict re-

leased upon parole, as will be seen from the provisions of the indeterminate sentence law above referred to, is not, when released upon parole, finally discharged from the prison. In the words of the statute he is issued a parole or permit "to go at large without the enclosure of the prison;" and he does not receive a final discharge until he has complied with the conditions of his parole and the time for which he was paroled has expired. If this section applies to prisoners released upon parole the prisoner would be furnished money and clothing in accordance with the provisions of the statute at the time he was released upon parole, and if he violated his parole and was again returned to prison, it would be necessary at the time of his final discharge to again provide him with money and clothing. The same would be true if he were paroled a second time (which your letter states has been done), and it would be necessary to supply him with the money and clothing under this section on the occasion of both his paroles and also at the time of his final discharge.

I am of opinion, therefore, that this section of the statute does not apply to convicts released upon parole.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

See Act 134 P. A. 1909, under which paroled prisoners now receive clothing and transportation.

NAVIGABLE STREAMS. A franchise to construct three dams in a navigable stream which provides that all of the dams shall be completed on or before a certain time and that in default thereof the franchise shall become void, constitutes one entire franchise and the failure of the grantee to construct all of the dams will authorize a forfeiture of the entire franchise.

March 31, 1909.

Mr. George G. Jenkins, Big Rapids, Michigan:

Dear Sir—I have had under consideration the matter submitted by you concerning the failure of the person, to whom was granted by the Board of Supervisors of Mecosta county the right to construct and maintain certain dams across the Muskegon river in said county to comply with the terms and conditions upon which the right was granted.

It appears that right and permission to build three dams across the river was granted by the board of supervisors to David D. Erwin, and his assigns, at the October session 1902. At a session of the board, held in June 1904, certain amendments to the grant, not material here, were made by the Board upon Erwin's application. Both the original and the amended grant contained this provision:

"That work shall be commenced on at least one of said dams within two years from April 1st, 1903, on the second dam within four years from April 1st, 1903, and on the third dam within five years from April 1st, 1903, and that all of said dams shall be completed on or before six years from April 1st, 1903; in default thereof, the rights and privileges

hereby created shall cease and become void and of no further effect, unless the time for such commencement and completion shall be extended by the board of supervisors of this county."

It is stated that but one of the three dams has been completed, and work upon the other two has not been commenced. You request an opinion upon the question whether, under the terms of the franchise, the grantee and his assigns have forfeited the right to maintain and operate the dam already constructed as well as the right to construct and maintain the other two dams; and ask what course the board of supervisors should pursue in relation to the matter.

For answer thereto I would say that in my opinion non-compliance upon the part of the grantee and his assigns with the condition annexed to the grant that all three dams shall be constructed and completed by April 1st, 1909 warrants the forfeiture of the entire franchise. There is but one franchise or grant, and the forfeiture clause relates to it as an entirety. A similar question was before the supreme court of Illinois in the case of People v. Improvement Company, 103 Ill. 491, 508. It was there contended that the failure to complete the entire improvement of the river forfeited only that part of the franchise which related to the uncompleted portion. The court said:

"We can see but one entire franchise for the improvement of these streams, and that this obligation to make the improvement above Kankakee City was a condition annexed to this entire franchise. And we cannot admit the idea, so ably and ingeniously pressed upon us, of the divisibility of franchise, that there became a separate, independent franchise as to the completed portion of the improvement below Wilmington, and a like one as to the portion of the improvement above Kankakee City, to which latter only the condition was annexed, and that it was the franchise as to this last named portion of the improvement only which was forfeitable for breach of the condition. We think the non-compliance with the requirement in question was cause of forfeiture of the entire franchise. An abuse in a particular department of an entire franchise is a cause of forfeiture of the whole franchise. Angell & Ames on Corp. Sec. 776."

Under the rule here laid down, I am of the opinion that, if there is any forfeiture under the franchise granted to Mr. Erwin, it is a forfeiture of the entire franchise and not merely that portion of it relating to the dams remaining uncompleted.

As to the course to be pursued by the board of supervisors if the time for the completion of the work is not extended under the terms of the franchise, I would say that the franchise provides that in that event the rights and privileges created thereby shall cease and become void and of no further effect. It does not in terms provide that the board of supervisors may declare the forfeiture.

In Union St. Ry. Co. v. Cir. Judge, 116 Mich. 694,

it was held that where the franchise of a street railway company provided that it might be forfeited by the city for a breach of condition, and the fact of a breach was undisputed, it was not necessary to proceed in court before enforcing the forfeiture by removing the tracks from the street. It was also said that if the contract simply provided for a forfeiture it would be compelled to proceed in the courts. I believe that in

the case under consideration it would be advisable to institute proceedings in court to enforce the forfeiture. This proceeding may be by quo warranto instituted by the prosecuting attorney of the county.

Valentine v. Water Power Co. 128, Mich. 280.

The board should, however, take some action at its next meeting declaring the franchise forfeited for breach of the conditions set forth therein, and serve notice thereof upon the grantee and his assigns.

In answering the question submitted I have merely attempted to advise you upon the abstract propositions of law governing the matter. Whether or not the courts will enforce the forfeiture is a question that can only be determined in proper proceedings instituted for that purpose.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

MEMORANDUM Relative to bill for payment of bond No. 631 for $3,000.00 of the $5,000,000.00 loan of 1837. (Senate file No. 107).

The bond mentioned in this bill is one of the $5,000,000 loan made by the state in 1837, the proceeds to be used in internal improvements within the state. The bonds were due in 1863. The act authorizing the loan and the bonds (Act 37 of 1837) provided that:

"The faith of the state is hereby pledged for the payment of the loan or loans hereby authorized to be contracted for, principal and interest, according to the terms of the contract or contracts in that behalf made by the Governor."

Upon some of these bonds, including the one mentioned in this bill, the state received only a small part of their face value. These bonds were designated the part paid $5,000,000.00 loan bonds.

Several acts were subsequently passed by the Legislature relating to the adjustment of these bonds and determining the amount due and owing by the state thereon. (Act 73 of 1843; Act 44 of 1846; Act 173 of 1848; Act 105 of 1855.)

The act of 1848 fixed the amount due for these bonds and provided for the surrender of the same and the issuance of new bonds therefor.

The act of 1855 required the holders of these bonds to surrender the same for the purpose of having the amount due thereon ascertained and new bonds issued therefor in accordance with the provisions of Act of 1848, within six months after the passage of the act of 1855, and provided that if the holders failed to present them within the prescribed time no interest should be allowed in the bonds thereafter.

By the provisions of these several acts the amount due and payable by the state on these part paid bonds was $578.57 per $1,000.

A number of these bonds, including the one mentioned in this bill, were not presented for exchange for other bonds within the time limited therefor by these acts. The original bonds nevertheless remained valid obligations of the state and the state has since 1855 uniformly redeemed the same upon the basis fixed by the several acts mentioned, viz.: $578.57

per $1,000. The report of the State Treasurer for the year 1857 shows that certain of these bonds were redeemed and paid at that rate. The same is true in 1858. In 1871 the report of the State Treasurer shows that a bond precisely like the one mentioned in this bill, for the sum of $3,000 was redeemed and paid at $1,735.71, or at the said rate of $578.57 per $1,000.

It appears, therefore, that the state has already recognized that these bonds were valid obligations of the state and redeemable at the rate of $578.57 per $1,000.

The reason why the bonds were redeemed and paid at this rate instead of their face value is made clear by what is said by the State Treasurer in his report for 1856 with reference to the adjustment of these part paid bonds, as follows:

"In this adjustment no injustice has been done to the bond holders, as it is certain that they received them only as collateral security from the United States Bank of Philadelphia for loans made to said bank, with full knowledge of the fact that the state had received but a part of the money upon them, and in the adjustment of these bonds the state has given new bonds for the full amount received by her, including interest thereon, which must at once be acknowledged to be just and equitable."

In 1899 the Legislature passed a joint resolution (No. 15) in which they authorized and directed the State Treasurer to call in for payment the part paid bonds of this $5,000,000 loan and to require the holders of said bonds to present them on or before December 30, 1899, and to give notice that if not presented for payment within that time the bonds should be declared forfeited.

Since the adoption of this resolution the bond mentioned in this bill has been presented for redemption and payment by the holder, William C. Shaw of Macon, Georgia.

Notwithstanding this resolution, the fact remains that this bond, for the payment of which the faith and credit of the state was pledged by the act of 1837, has never been redeemed or paid by the state. It is a valid obligation of the state for the amount of $1,735.71 and the state is in honor bound to discharge this obligation by payment of that sum.

JNO. E. BIRD,
Attorney General.

Prepared for Senator Charles Smith, and delivered to him in March, 1909.

CONSTITUTION—JUDGE OF PROBATE—JUDGE OF SUPERIOR COURT OF GRAND RAPIDS. The judicial functions of a judge of probate cannot be conferred upon the judge of the superior court of Grand Rapids, by the legislature.

April 1, 1909.

Mr. Roger I. Wykes:
Attorney at Law, 731 Michigan Trust Bldg., Grand Rapids, Michigan:

Dear Sir—Replying to your letter of the 25th ultimo, in which you re-

quest my opinion as to whether, under the revised constitution, the Legislature may provide by statute that the Judge of Probate of Kent county may call in the Judge of the Superior Court of Grand Rapids to assist in the Probate Court work, will say that I am satisfied from an examination of the provisions of Article VII of the revised constitution that it was not contemplated that the judicial functions of a Judge of Probate should be exercised by a judge of a court having jurisdiction in no way concurrent with that of the Judge of Probate, and who is not elected by the entire electorate of the county in which it is proposed such functions will be exercised.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—RIGHT OF WOMEN TO VOTE ON RAISING SALARIES. Under Sec. 4, Art. III of the constitution, women tax payers are entitled to vote upon the question of raising the salaries of the mayor and aldermen.

April 1, 1909.

Mr. Homer J. McBride, City Attorney, Flint, Michigan:

Dear Sir—Your communication of March 29th, to Mr. Lawler, is received. You ask whether women tax-payers having the qualifications of electors are entitled to vote on the question of raising the salaries of the mayor and aldermen at the spring municipal election to be held in your city.

In reply thereto would say it is understood from our conversation over the telephone, although we have not found the provision, that there is a section in your city charter which authorizes the question of raising the salary of the mayor and of each alderman to be voted upon by the tax-payers of the city.

Section 4 of Article III of the Constitution provides that:

"Whenever any question is submitted to a vote of the electors which involves the direct expenditure of money, or the issue of bonds, every woman having the qualifications of male electors, who has property assessed for taxes in any part of the district or territory to be affected by the result of such election, shall be entitled to vote thereon."

It is apparent that this provision confers upon women the right to vote upon any proposition which involves the direct expenditure of public money and for which their property may be assessed. The question of raising the salaries of city officers clearly involves the direct expenditure of public money, and all property in your city will be affected thereby.

It is, therefore, my opinion that women have the right to vote upon such proposition.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—BORROWING OF MONEY—CONTRACTING DEBTS. Legislation is necessary to carry into effect the provision of the constitution which authorizes the state to contract debts to meet deficits in revenue.

April 7, 1909.

Hon. Oramel B. Fuller, Auditor General, Capitol, Lansing:

Dear Sir—I have your communication of March 30th, which reads in part as follows:

"Anticipating that it will be necessary for the State to take advantage of the clause in the Constitution providing for the borrowing of money, I would like your opinion as to whether it is necessary for legislative action to put Section 10 of Article X of the Constitution in force. . . . I presume where the word "State" is used it means that the State Treasurer may contract the debt, but whether it is necessary for the Legislature to enact a law to put this provision in force I do not know and I would like your opinion on the same."

In reply thereto would say, the section of the Constitution to which you refer reads as follows:

"Section 10. The state may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time exceed two hundred fifty thousand dollars. The state may also contract debts to repel invasion, suppress insurrection, defend the state or aid the United States in time of war. The money so raised shall be applied to the purposes for which it is raised or to the payment of the debts contracted."

It will be observed that while the authority to contract debts to meet deficits is given to "the State," the agent or official who may exercise such authority is not named; the manner in which the debt shall be contracted is not specified; nor are any of the details necessarily incident to the carrying into effect this constitutional provision outlined. In the absence of any legislative action no officer has authority to bind the State under this provision, and no official would have any authority to arbitrarily prescribe terms in case it is necessary to contract a debt.

It is, therefore, my opinion that this section of the constitution is not self-executing, and that legislation is necessary before a debt can be contracted under its provisions.

I may also suggest that it would seem proper to vest the authority to contract a debt under this section of the constitution in the Board of State Auditors, rather than in the State Treasurer or any other state officer. The terms upon which the debt may be contracted should be outlined in detail in order that difficult and technical questions may, so far as possible, be avoided.

Very respectfully,
JNO. E. BIRD,
Attorney General.

OFFICES—COMPATIBILITY—COUNTY CLERK AND VILLAGE TRUSTEE. A county clerk may act as village trustee.

April 7, 1909.

Mr. Robert P. Reavey, County Clerk, Caro, Michigan:

My dear Sir—I am in receipt of your communication of April 5th making inquiry as to whether there is any legal reason why a county clerk could not act as village trustee.

No reason suggests itself to me which would prevent it. There would have to be some conflict in the duties of the respective offices in order to make the offices incompatible. The duties of these offices seem to be completely divorced from each other and I can see no way in which a conflict would take place. I am, therefore, of the opinion that there is no legal objection to a county clerk serving as a village trustee if he chooses to do so.

If the offices should be held to be incompatible, I think in taking the constitutional oath you have gone far enough to accept the office of trustee and in consequence thereof have surrendered the office of county clerk, but in view of my opinion it would be useless to discuss this question

Very truly yours,
JNO. E. BIRD,
Attorney General.

FALSE NAME. There is no law forbidding railroads and shippers to ship goods "under a false name," except the one which applies to nitroglycerine, etc.

April 7, 1909.

Mr. Robert H. Lane, Prosecuting Attorney, Midland, Michigan:

My dear Sir—In answer to yours of April 6th, making inquiry if I know of any law forbidding railroads and shippers to ship goods under a false name, will say that I know of no law of that kind except the one which applies to nitroglycerine and other explosive substances. This section is 11516 of the Compiled Laws of 1897. If there are any other sections bearing on that question, I have no knowledge of them.

Very truly yours,
JNO. E. BIRD,
Attorney General.

ELECTION LAW. (1) may a person legally act as a challenger at a township election in a township in which he is not a resident and voter.

(2) may a supervisor who is a candidate for re-election sit as a member of the board of election inspectors at a township election.

(3) the act of a supervisor who was a candidate for re-election in acting as an election inspector would not in itself vitiate the election.

April 7, 1909.

Mr. E. O. Shaw, Newaygo, Michigan:

Dear Sir—I have considered the inquiries submitted by you which are as follows:

First, May a person legally act as a challenger at a township election in a township in which he is not a resident and voter?

Second, May a supervisor who is a candidate for re-election sit as a member of the board of election inspectors at a township election?

Third, If it is established that a person cannot act as a challenger at an election in any other than his own township and that a supervisor who is a candidate for re-election may not act as an inspector of an election, how will such facts affect the result of the election?

In reply to your first inquiry would say Section 3633 of the Compiled Laws of 1897, being Section 132 of the pamphlet of Election Laws, revision of 1907, provides that at every election each of the political parties shall have the right to designate and keep not exceeding two challengers at each place of voting. There is nothing in this section and my attention has not been called to any provision of law which makes it obligatory that the challenger of a political party shall be a resident and voter of the township in which the election is held. The duties of a challenger are not such as would require him to be a resident and voter of such township. It is therefore my opinion that a person properly designated as a challenger would have the right to act in that capacity although not a resident and voter of the township in which the election is held.

In reply to your second inquiry would say Section 3612 of the Compiled Laws of 1897, being Section 111 of the pamphlet of Election Laws, revision of 1907, provides, in part:

"That at all elections at which any presidential elector, member of congress, member of the legislature, state or county officer or circuit judge is to be elected, or any amendments to the constitution, the supervisor, two justices of the peace not holding the office of supervisor or township clerk, whose term of office will first expire and the township clerk of each township, and the assessor, if there be one, an alderman of each ward in a city shall be the inspectors of election: . . . . And provided further, That no person shall act as such inspector, who is a candidate for any office to be elected by ballot, at said election."

The latter portion of the foregoing quotation needs no explanation. It is expressly provided that any person who is a candidate for any office to be elected by ballot shall not act as an inspector of election. Therefore, a supervisor who is a candidate for re-election has no right to act as an inspector at a township election.

In answer to your third inquiry would say my conclusion in regard to your first inquiry makes it unnecessary to refer to a challenger in the answer to your third inquiry.

There is nothing in the statute which, in the absence of fraud, indicates that if a candidate for any office acts as an inspector, his act would necessarily invalidate the election. It is said that:

"There is a conflict in legislative cases upon the question whether the appointment and service as an election officer of a person ineligible or disqualified to act will vitiate the election. But the courts hold almost unanimously that the ineligibility or disqualification of an elector, judge, or other election officer will not be ground for declaring an election void, in the absence of fraud or other misconduct affecting the result."

10 Am. & Eng. Ency. of L. 2d Ed. pp. 669, 670.

In People v. Avery, 102 Mich. 572, it was contended that the election was void because two persons acted as inspectors of the election who, it was claimed, were ineligible to act in such capacity. The Supreme Court, however, refused to adopt this conclusion and in the course of its opinion said:

"The electors are not to be deprived of the result of their votes at an election by the mistake of election officers, when it does not appear to have changed the result. Under repeated decisions it is settled that the matters relied on here were irregularities, and did not invalidate the election." (574).

See also Collins v. Huff, 63 Ga. 207,
Bell v. Faulkner, 84 Texas 187,
Sanders v. Lacks, 142 Mo. 255.

It is therefore my opinion that the act of the supervisor who was a candidate for re-election in acting in the capacity of an election inspector would not in itself vitiate the election. It is possible, however, that such person may by his act have violated the provisions of the General Election Laws and thereby subjected himself to the penalty prescribed in Section 3655 of the Compiled Laws of 1897, being Section 153 of the pamphlet of Election Laws, revision of 1907.

Very respectfully,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—LEGISLATURE—DISCHARGING OF COMMITTEE FROM FURTHER CONSIDERATION OF A BILL. Under Sec. 15 of Art. V of the constitution, the legislature cannot adopt any rule which would in any way prevent a majority of the members of either house from discharging a committee from the further consideration of any bill and the failure of a notice or resolution to receive a majority vote, which was made to discharge a committee, could not operate to prevent the adoption of such a resolution at a future date.

April 8, 1909.

Hon. E. J. Bryant, Member of House of Representatives, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the 7th inst.,

requesting my opinion as to whether or not the failure of a notice or resolution to receive a majority vote, which was made or introduced for the purpose of discharging a committee of the House of Representatives from further consideration of a bill before such committee, would preclude that body from taking further action to discharge such committee from further consideration of the same bill.

In reply thereto I beg to call your attention to Section 15 of Article V of the Revised Constitution, which in part reads as follows:

"Each House, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, *but shall not adopt any rule that will prevent a majority of the members elect from discharging a committee from the further consideration of any measure.*"

In the Address to the People of the State of Michigan, submitting the proposed revision of the Revised Constitution, the Constitutional Convention submit the following, relative to the constitutional provision above quoted:

"Sec. 9, Art. IV of the present constitution is changed so as to prohibit the legislature from adopting any rule that will prevent a majority of its members from taking a bill from the hands of a committee. This amendment is deemed to be a wholesome one. Its purpose is to defeat the practice of committees refusing to report out bills in their hands, and thereby prevent action thereon. Under the two-thirds rule now existing a minority are enabled to prevent a bill coming before the legislature. This amendment will place control of all bills in the hands of the majority where it clearly belongs."

The purpose and object of this constitutional provision seems plain, independent of the language used by the Constitutional Convention for the purpose of explaining the same. The constitution in this particular is in force and operative all of the time. The House of Representatives is not vested with the authority or power to adopt a rule that would in any manner prevent a majority of that body from discharging a committee from further consideration of any bill at any time such action might be deemed wise. The failure to adopt such a resolution as you have referred to could in no way operate to prevent the adoption of such a resolution at a future date.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

DAMS—DUTIES OF SUPERVISORS IN FIXING CONDITIONS, ETC. Suggestions of Attorney General with reference to fixing the compensation and other conditions under which dams may be constructed.

By request, these suggestions were furnished to the Prosecuting Attorney of one of the counties, whose Board of Supervisors was about to enter into an agreement with a company to construct several dams.

April 9, 1909.

My dear Sir—I am in receipt of your communication of April 5th,

asking me for some suggestions with reference to the duties of the supervisors fixing the compensation and conditions under which dams may be constructed in your county. So few boards have acted under this power, and their action is so little known, that it is very difficult to give you any data as to what other boards of supervisors have done.

The suggestions which I have to make are as follows:

(a) I should provide for the company owning and operating a dam to pay the county a certain per cent of gross earnings and fixing an annual minimum charge; for example, say 2 per cent of the gross earnings to be paid to the county, and fixing a lump sum which should be paid in any event, whether the dam was operated or not.

(b) I would make a difference between the amount of gross earnings to be collected when the power was sold within the county and when it was sold without. I take it that you want to protect your county, and some differences might arise where the company would sell all of its output outside of the county. So, if I fixed 2 per cent on the gross earnings within the county, I would fix 2½ per cent on the gross earnings derived from a sale of the power outside of the county.

(c) I would provide in the contract for a forfeiture for failure to comply with the conditions; the forfeiture to be declared by the board of supervisors.

(d) I would reserve the right to re-fix the percentage on gross earnings charged every ten years. I would do this, because conditions change, and at the end of ten years it might be that experience would show that the percentage ought to be raised; on the other hand, it might show that it should be decreased. This whole subject matter of the sale of water power is a new one, and you have got to feel your way by experience.

(e) I should provide in the contract that the work should be completed at a stated time; and for a failure to do so, I should provide a forfeiture; the forfeiture to be declared by the county.

(f) This permit and contract is subject to all valid liens and regulations of the state of Michigan, and of the United States now or hereafter in force.

I want to impress upon you the importance of making your contract in accordance with sub-division "d" of the foregoing suggestions. In view of the fact that the Board of Supervisors makes this contract, by virtue of a provision in the constitution, the Courts may so construe it that the contract cannot be affected by legislative acts. If the Court should take this position after the contract is once signed, you will shut yourself off from all relief.

These are about all the suggestions that I can make at this time. If the duty devolved upon me, I should settle it along these lines. I think it would be much more satisfactory than it will be to fix any definite sum. The conditions are so mercurial that a fixed sum might be an injustice to either the county or the company but if the compensation is fixed upon a basis of gross earnings, it will automatically adjust itself to the varying conditions.

After you draft the contract, I will gladly review it and make such suggestions as I think will be helpful to you, if you desire it. I have not a little interest in this matter, because when you get the matter

worked out, it is going to be followed more or less by other boards, and it is important that you get the matter upon the right basis, where it will be fair not only to the county but to the companies constructing the dams.

Very truly yours,
JNO. E. BIRD,
Attorney General.

STATE BOARD OF OSTEOPATHIC REGISTRATION AND EXAMINATION. Bond of treasurer must be approved at regularly called meeting of board.

OFFICIAL BONDS. A married women cannot be surety upon an official bond.

April 21, 1909.

Dr. W. H. Jones, Adrian, Michigan:

Dear Sir—Replying to your letter relative to the legality of the bond of Edythe M. Ashmore, as Treasurer of the Michigan State Board of Osteopathic Registration and Examination, and your duty as a member of the Board to approve the bond furnished; will say that Sec. 1 of the act provides in part:

"The board shall organize by electing a president, secretary and treasurer, each to serve for a term of one year. The treasurer shall give a bond in the sum of five thousand dollars with sureties approved by the board for the faithful discharge of his duties. . . . The board shall have a common seal and shall formulate rules to govern its action."

We have before us what purports to be a copy of the by-laws and rules of order adopted by this board, December 10th, 1903. Sec. 2 provides:

"The election of officers shall take place at the annual meeting which occurs at Lansing the first Tuesday of each year."

Section 3 provides:

"It shall be the duty of the president to preside at all meetings, regular or special, to appoint committees when needed to assist in special work of the board, to appoint officers from among other members of the board to fill vacancies, officers so appointed to hold office until the next annual meeting. . . ."

From the information we have before us, we take it that the president did not choose to exercise his power of appointment by appointing Doctor Ashmore as treasurer of the board to fill the vacancy; but rather undertook to obtain the individual expression of the members of the board, with the idea that this would operate as an election.

It is well settled that no action of the board can be taken except at a regularly called meeting of the board, unless all the members convene and consent to such action. Any attempt to obtain an election of an office of the board except at a regularly called meeting would be void.

Likewise, the bond is required by the statute to be approved by the board. This would require an approval of the bond at a regular session of the board by means of a resolution, which should appear upon its

minutes, and no approval by the individual members of the board would be considered a sufficient compliance with the statute.

I can see no reason why the president would not have the authority under the rules to appoint a treasurer to hold office until the next annual meeting; but before the bond of such officer can be approved, it would be necessary to have a special meeting of the board to approve this bond.

I note that Emma M. Ashmore appears as one of the sureties upon the bond. I am not advised as to whether she is a married woman. If so, she cannot be a surety upon a bond of this character, under the laws of this state.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CONSTITUTION—LOCAL OR SPECIAL ACT. The legislature cannot pass an act for the protection of deer in a certain county, as it would be a "Special or Local," within the prohibition of Sec. 30 of Art. V of the constitution.

April 21, 1909.

Hon. Earl Fairbanks, Senator, Capitol, Lansing:

Dear Sir—In response to your inquiry relative to the right of the Legislature to pass a bill for the protection of deer in a certain county; would say that Section 30 of Article V of the Constitution provides that:

"The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

It is clearly evident that the Legislature has no authority to pass a local or special bill where a general act can be made applicable. A bill for the protection of deer in a particular county is clearly a local or special act. I would seem that a general act could be made applicable to this subject. It is, therefore, my opinion that the Legislature would have no authority to pass such a bill as that which you suggest.

Very respectfully,
JNO. E. BIRD,
Attorney General.

PRIVATE FORESTRY. "A bill to encourage private forestry, the care and management thereof, and to provide for the exemption from taxation of such private forest reserves," is unconstitutional under the laws and constitution of this state.

April 21, 1909.

Hon. James L. Morrice, Representative, Capitol, Lansing:

Dear Sir—I have carefully examined House Bill No. 387, File No.

197, entitled "A bill to encourage private forestry, the care and management thereof, and to provide for the exemption from taxation of such private forest reserves." This bill provides that if the owner of any tract of land shall maintain a forest reserve upon a certain portion thereof, in accordance with the conditions prescribed in said act, that such private forest reservation shall be exempt from taxation over and above an assessed valuation of one dollar per acre. You ask for an opinion as to the constitutionality of this act.

In reply thereto would say, the effect of this proposed bill would be to legislate in favor of a particular class. The favor which is conferred upon the class which falls within the provisions of the proposed bill is at the expense of all other taxpayers of the state, as the exemption would operate to increase the amount which must be paid by all other taxpayers. The language used by our Supreme Court in People v. Township Board of Salem, 20 Mich. 452, is applicable here. In that case the court said:

"But the discrimination by the State between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandising or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in State government. When the door is once opened to it, there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety, but no further. Every honest employment is honorable; it is beneficial to the public; it deserves encouragement. The more successful we can make it, the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another, or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all, and to give all the benefit of equal laws."

In Michigan Sugar Company v. Auditor General, 124 Mich. 674, the court considered an act providing for the payment of certain bounties to manufacturers in this state of sugar from beets grown in this state. The court in that case adopted the language above quoted, and declared the act authorizing the payment of such bounty to be unconstitutional.

In the later case of Michigan Corn Improvement Association v. Auditor General, 150 Mich. 69, an act was passed appropriating state funds for the use of said association, which was limited to persons actively interested in the improvement of corn. The act was declared to be unconstitutional.

We can not distinguish the principle involved in the proposed bill from that discussed in each of the above cases. The effect is the same; there is no distinction. It is true that under the new Constitution, Section 14 of Article X, the State may be interested in the work of reforestation; but even in that case the reforestation must be "of lands owned by the state."

It is my opinion that the above decisions of our supreme court govern the question presented by you, and that the proposed bill is unconstitutional.

Very respectfully,
JNO. E. BIRD,
Attorney General.

INSANE ASYLUM—DEAD BODIES. Superintendent of the asylum may properly deliver the dead body to mother of deceased, where it appears wife did not live with him but a few months and had instituted divorce suit which she dropped after insanity appeared.

April 27, 1909.

Dr. A. I. Noble, Superintendent, Michigan Asylum for the Insane, Kalamazoo, Michigan:

Dear Sir—Replying to your telephone communication of this morning, as to what disposition should be made of the dead body of a patient who has just died at the asylum; will say that the facts as we understand them from your statement and from the statements of the various attorneys who have called us up in regard to the same, are as follows:

That this patient was married some years ago, and that his wife lived with him but a few months; that after their separation she instituted a suit for divorce, which she afterwards dropped. That the patient moved to Grass Lake, his old home, and there lived with his mother, until his mental condition became such that it was necessary to send him to the asylum, where he has since been as a private patient. There is now a controversy between the mother and the wife as to the possession of the body of this patient.

The statute relative to the disposition of the bodies of patients dying at state institutions furnishes no help in the solution of the problem.

While it may perhaps be conceded that under normal conditions the widow would be entitled to preference in controlling the burial of her deceased husband, yet the circumstances of this case show that normal conditions do not exist—the wife and the husband having separated and she having instituted proceedings for divorce, which, although they have been dropped, yet indicate that normal relations did not exist between them prior to the insanity of the patient, and might indicate that they were dropped by reason of the fact that the husband's insanity placed him out of her way and made her certain of a share in his estate at his death, if the proceedings were not pushed to determination.

A case very similar to the one under consideration arose in New York. The deceased was a patient in an asylum at his death, had one living son by a former wife; the widow desired the remains to be buried in the family lot of her father; the son desired the remains to be buried in the lot of the deceased with his first wife and children. In disposing of the case the court said:

"To lay down the inflexible rule that the widow is to be preferred to the children, might, rare as such contentions are, sometimes result in great harshness and outrage. Adopting this rule, I award the disposition of the these remains to the son, to the end that they may be buried in the lot purchased by the deceased in his lifetime, near the place of his early residence, where his first wife, and two children by her, lie buried. He had no children by his last wife; the lot in which she proposes to bury him is her father's. It cannot now be known whether she will find her grave in the same lot and not by the side

of another husband. It seems to be more inconsonance with what we may presume his feelings in his rational moments to have been, to bury him by the side of his children and their mother, rather than alone in the lot of a stranger, and certainly more in consonance with the feelings of those who are bound closest to him by the ties of blood and longest affection. I mean to recognize the fact that circumstances may exist which should give the widow the preference over the son, but in this case I think the claim of the son is to be preferred." Snyder v. Snyder, 60 How. Pr. (N. Y.) 368.

In another case it was said:

"Equity only can give a full and complete remedy, and we think the jurisdiction is fully adequate to it. * * *

"Although, as we have said, the body is not property in the usually recognized sense of the word, yet we may consider it as a sort of quasi property, to which certain persons may have rights, as they have duties to perform towards it arising out of our common humanity. But the person having charge of it cannot be considered as the owner of it in any sense whatever; he holds it only as a sacred trust for the benefit of all who may from family or friendship have an interest in it, and we think that a court of equity may well regulate it as such, and change the custody if improperly managed. So in the case of custody of children, certain persons are prima facie entitled to their custody, yet the court will interfere and regulate it. We think these analogies furnish a rule for such a case, and one which will probably do most complete justice, as the court could always interfere in case of improper conduct, e. g. preventing other relatives from visiting the place for the purpose of indulgence of feeling, or testifying their respect or affection for the deceased." Pierce v. Proprietors of Swan Point Cemetery, 10 R. I. 227, 242.

In another case it was held:

"There is no universal rule as to the burial of the dead applicable to all cases; but to each case must be considered an equity on its own merits, having due regard to the interests of the public, the wishes of the decedent, and the rights and feelings of those entitled to be heard by reason of relationship or association." Pettigrew v. Pettigrew, 207 Pa. St. 313.

In still another case it was held:

"Where a deceased person did not in his lifetime live with his wife and no executor or administrator has been appointed over his estate, a sister of the deceased has right to direct and control the burial of his dead body." Kitchen v. Wilkinson, 26 Pa. Sup. Ct. 75.

The equities in this case, a they appear to us from the statement of facts before us, are strongly in favor of the mother, by reason of the fact that the wife lived with the husband but a few months; instituting divorce proceedings, which were only dropped when it was found that the husband was insane; and that the deceased was separated from his wife for some time before becoming insane, and during that period made his home with his mother.

While any disposition that you may make of the body will not preclude a final determination of its custody by the courts, if the parties see fit to invoke legal process, yet it seems to me that you should be guided

in your actions by the equities of the situation, and should deliver the body to the custody of the mother of the deceased.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

"ST. CLAIR FLATS." Statement by attorney general relative to pending legislation.

May 17, 1909.

To the Honorable President and Members of the State Senate, Capitol, Lansing:

Gentlemen—The State, after a strenuous fight in the courts extending over a period of fifteen years, has recently succeeded in establishing its right to the territory known as the "St. Clair Flats." The contest has been an expensive one, costing the State upwards of seventy-five thousand dollars, the surveys alone costing over fifty thousand dollars. The theory upon which the courts confirmed the State's title to these lands was that in 1837 when the state was admitted into the Union, they were submerged lands and passed to the state as lake bottom, in trust for the whole people. The lands coming to the state burdened with a trust, it was decided by the legal department that they could not be sold outright to private persons for private uses, and that the most the state could do would be to lease them for a term of years. In accordance with this conclusion, Senator Weter's bill was passed by your Honorable body, providing for leasing them. This bill was amended in the House so as to provide for conveying title, for a nominal consideration, to the squatters, a majority of whom took possession while the state was engaged in the fight to establish its title.

The writer is of the opinion that the State has no power to convey the title to these lands to private interests for private purposes. The status of the title is well expressed by Justice Brown in Illinois Central Railroad Company v. Chicago, 176 U. S. 646, where it is said:

"Under the law of the State of Illinois, as laid down by the Supreme Court, not only in the case under consideration, but in the prior case of People v. Kirk, 162 Illinois, 138, 146, 'the State holds the title to the lands covered by the waters of Lake Michigan lying within its boundaries, but it holds the title in trust for the people, for the purposes of navigation and fishery. The State has no power to barter and sell the lands as the United States sells its public lands, but the State holds title in trust in its sovereign capacity, for the people of the entire State.' Such was also the ruling of this court in a case between the same parties, Illinois Central Railroad v. Illinois, 146 U. S. 387, affirming Illinois v. Illinois Central Railroad, 33 Fed. Rep. 730."

It will be perceived from these authorities that when the State offers to lease these lands, that it is offering all that is within its power to grant.

It is urged that Senator Weter's bill confiscates the improvements made by the squatters. This statement finds refutation in the provision

of the bill which gives to those who have made improvements the first right to lease the lands upon which the improvements are made. It should also be remembered, in this connection, that squatters who are able to build summer homes have sufficient intelligence to know that lands which they have not bought and paid for do not belong to them. The poor man, as a rule, is not looking for a place upon which to erect a summer home.

It the House amendments are enacted into law, the State will not receive enough from the sale of these lands to reimburse it for the expense incurred in the surveys and legal contests. It might also be called to your attention that if the State had not fought and established its title to these lands, the squatters would now be without the privilege that the State offers them.

These lands comprise about five thousand acres, which are available for division into twenty thousand lots; three thousand of which are already surveyed and marked. A conservative estimate of the value of these lands is a half million dollars, and in ten years they will double in value. And even if the title could be conveyed by the State, would it be the part of wisdom for the State to dispose of its entire interest in them at this time? The interests of the state at large are paramount to those of the very small proportion of the population now occupying these lands, and the policy of the Legislature should be to consider the interests of the state at large.

Upon a consideration of the whole matter, I am of the opinion that you have not the power to convey the fee in these lands, and even if you had, that it would not be policy at this time to do so.

Respectfully submitted,

JNO. E. BIRD,
Attorney General.

TAXATION—EXEMPTIONS—ARMORIES. The part of a building which is used for armory purposes may be exempt from taxation, without exempting the entire building.

May 26, 1909.

Mr. John J. Kiley, City Attorney, Monroe, Michigan:

Dear Sir—Replying to your telegram of the 25th inst., stating that the Armory Association of your city, a Michigan corporation, is the owner of a building occupied by the National Guard; that the building contains an opera house which is used daily for private gain, and requesting the opinion of this Department as to whether the building is entirely exempt from taxation, under Section 64 of House Enrolled Act 55 of the Legislature of 1909, the same being the so-called Military Law; will say that the section in question provides:

"Armories erected by counties, cities, private corporations, corporations composed of national guard companies or private individuals, and used by organizations of the permanent organized militia, shall be exempt from all taxes, ordinary or extraordinary, whether levied by the

state or by counties or municipalities, the same as other state property is exempt. Bonds, mortgages and other certificates of indebtedness made and issued by any municipality, organization or private individual for the purpose of erecting armories under this act, shall not be assessed or taxed as personal property for any purpose, when held by any person within the state of Michigan."

It will be noted that the language used in the statute is "armories . . . used by organizations of the permanent organized militia."

In Detroit Young Men's Society v. Mayor, etc., 3 Michigan. 172, the law exempted personal property of library, benevolent, charitable and scientific institutions incorporated within this state, and such real estate belonging to such institutions as shall *actually be occupied by them for the purpose for which they were incorporated;* and the court held only that part of the building used for the purposes mentioned in the exemption clause was entitled to the benefit of the exemption and that the balance of the building was subject to taxation. See also Auditor General v. Temperance Association, 119 Mich. 430.

Exemption laws are in derogation of equal rights, and the courts have laid down the principle that nothing can be held to be exempt by implication. I am of the opinion that if a part of the building is used for armory purposes, the value of that part should be determined and exempted from taxation; and that the value of the balance of the building should be assessed in accordance with the principles laid down in Detroit Young Men's Society v. Mayor, etc., supra.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

SCHOOL LAW—TUITION TO HIGH SCHOOL. Senate enrolled act No. 25, providing that the school board vote a sufficient tax to pay the tuition of certain children to one of the three nearest high schools, cannot be made operative during the school year of 1909-1910.

May 27, 1909.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—In response to your oral inquiry, whether the provisions of Senate Enrolled Act No. 25 can be made operative during the school year of 1909-10, would say that this act requires the board of education to vote a sufficient tax to pay the tuition of certain children to one of the three nearest high schools. It is also provided:

"That the parents of such children shall give written notice to the board of education on or before the fourth Monday of June that they are the parents or legal guardians of such children and that such children desire to attend some certain one of the three nearest high schools during the ensuing year."

Section two of said act provides that:

"The tax provided for in section one of this act shall be reported to

the clerk of the township in which such district is located and shall be spread upon the tax roll of such township in the same manner and at the same time as other school taxes."

It will be observed from the foregoing: First, that the notice by the parents or legal guardians of the children benefitted by the provisions of this act must be given on or before the fourth Monday of June: Second, that the tax provided shall be reported to the clerk of the township in the same manner and at the same time as other school taxes. The act will not take effect until the first day of September; therefore, the required notice can not be given.

Section 4675 of the Compiled Laws of 1897, being Section 53 of the pamphlet of General School Laws, Revision of 1907, requires all taxes which may be voted by the district board to be reported to the township clerk between the second Monday in July and the first Monday in August in each year. This provision can not be followed, for the reason that the act will not take effect until after the time designated by the above general statute is passed.

It is therefore, my opinion that since the act does not take immediate effect that it can not be made operative during the school year 1909-10.

Very respectfully,
JNO. E. BIRD,
Attorney General.

MILITARY LAW—ARMORIES—INSURANCE. There is no provision for the rebuilding of an armory destroyed by fire and if such building is insured it must be at the expense of the municipality rather than the state.

May 27, 1909.

General James H. Kidd, Quartermaster General, Capitol, Lansing:

Dear Sir—I have your communication of May 11th, submitting an inquiry relative to the armories authorized to be constructed by the State of Michigan. You ask, if in case of fire causing the total destruction of any of said buildings, would the State, in accordance with its usage of insuring its own property, replace said building; or if it would be necessary for the city to insure the building for an amount sufficient to cover its interest as it might appear.

In reply thereto would say, the new military bill limits the amount which may be appropriated for the purpose of constructing an armory for any one company to fifteen thousand dollars. See Section 67 of House Enrolled Act No. 55. The difference between the amount which may be expended by the State and the estimated cost of an armory is donated from local sources. However, the title to the armory vests absolutely in the State.

There is no statute expressly requiring a state building to be replaced, if destroyed by fire. It is questionable whether the provisions of Sections 2238 to 2242 inclusive, of the Compiled Laws of 1897, would confer upon the Governor and the Board of State Auditors the authority to re-

place an armory that had been destroyed by fire. An examination of this statute, however, will disclose that any such action as may be taken is, at most, largely discretionary. If in case of fire the State, by its proper officers, decided not to replace an armory, the organization or municipality which had donated money for the purpose of assisting in the construction of such armory would have no claim against the State for the amount so donated. I am of opinion, however, that an organization or municipality which has donated money towards the erection of an armory has such interest therein as would be considered an insurable interest, and that it is proper for any such organization or municipality to insure the building for an amount sufficient to cover what may appear to be its interest.

Very respectfully,
JNO. E. BIRD,
Attorney General.

RAILROAD LAW. Excursion rates.

May 27, 1909.

Hon. C. L. Glasgow, Chairman, Michigan Railroad Commission, Lansing, Michigan:

Dear Sir—I have your communication of April 14th, together with enclosed correspondence. The communication and correspondence relate to the claim of Messrs. E. V. Chilson and Oscar McKinley of Lansing against the Pere Marquette Railroad Company, in connection wtih excursions run for a band tournament held in Lansing during the summer of 1908. It appears that the gentlemen named entered into an arrangement with the Pere Marquette Railroad Company to run excursion trains at a reduced rate of fare, one from Plymouth, one from Holland, and one from Howard City. That in accordance with Subdivision G. of Section 10 of Act No. 312 of the Public Acts of 1907, (The Michigan Railroad Commission Act) the Pere Marquette Railroad Company filed a tariff or schedule of rates with your Commission. This tariff of rates so filed reads in part as follows:

"On acceptable guarantee of sale of 150 full fare or their equivalent in full and half fare tickets, each, at Howard City, Holland and Plymouth, an advertising allowance of 20 per cent of the amount of sales at those stations and 10 per cent of the amount of sales at other stations named, will be made guarantors, payment to be made by voucher."

It is understood to be the claim of Messrs. Chilson and McKinley that they were to deposit with the Railroad Company an amount equal to the price of 150 full fare tickets, or their equivalent, from the starting point of the excursion, and that the Railroad Company would return to them the earnings of the train in excess of such amount.

It is understood to be the claim of the Pere Marquette Railroad Company that Messrs. Chilson and McKinley were to guarantee the sale of 150 full fare tickets, or their equivalent, from the starting point of each excursion, and that they would be entitled to the advertising allowance prescribed in the tariff of rates.

Your communication states that in view of an evident misunderstanding between the Pere Marquette Railroad Company and Messrs. Chilson and McKinley, that the Railroad Company is willing to retain the amount paid as a guarantee and return to Messrs. Chilson and McKinley the amount of the earnings of the excursion trains, provided your Commission will grant them authority so to do. You ask whether your Commission has authority to grant the repayment of the sum in question.

In reply thereto would say, the tariff or schedule of rates filed with your Commission can only be construed to mean that the excursion trains were to be run on a guarantee of the sale of 150 full fare tickets, or their equivalent, from the starting or initial point of each excursion. There can be no question but this was to be from the "starting point" or "initial point," as the tariff or schedule expressly provides for the "guarantee of sale of 150 full fare tickets or their equivalent in full and half fare tickets, each, at Howard City, Holland and Plymouth." Your communication and the enclosed correspondence indicates that the foregoing was the construction placed upon the tariff of rates by the Railroad Commission and by the Pere Marquette Railroad Company. The language used is clear and explicit, and is not susceptible of any different construction.

The law under authority of which this tariff or schedule of rates was filed with your Commission provides, in part, that:

"No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act. . . . Nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property except such as are specified in such tariff." (Subdivision G. Section 10 of Act 312, Public Acts 1907.)

Therefore, the Pere Marquette Railroad Company can not grant the request of Messrs. Chilson and McKinley to keep the amount paid as a guarantee and return the earnings of the trains, without violating the express terms of this law.

But it is suggested that in view of a misunderstanding, that the Pere Marquette Railroad Company will grant this request, provided the Railroad Commission will authorize such action to be taken. The Railroad Commission has no authority to authorize any such action. It is powerless to act to relieve parties from the results of misunderstandings, when its action would violate the law under authority of which it acts.

The provisions of the law requiring a tariff or schedule of rates to be filed with the Railroad Commission is a wise and salutary one. Its effect is to apprise the public of the rate to be enforced and to prohibit any person or persons from receiving favors from the railroad companies. The tariff of rates in question was filed with, and accepted by, the Railroad Commission, and has been properly construed both by the Commission and the Pere Marquette Railroad Company. If the Railroad Company remits or refunds any of the rates or fares specified in this tariff of rates, it will violate the law. If the Railroad Commission per-

mits the Pere Marquette Railroad Company to take any such action, it will expressly authorize the violation of a law. The Railroad Commission is powerless to act in the premises. If any wrong is suffered by Messrs. Chilson and McKinley, they have their remedy in the courts. It is my opinion that the Michigan Railroad Commission has no authority to permit or authorize the repayment of the sum in question.

Very respectfully,
JNO. E. BIRD,
Attorney General.

The correspondence is herewith returned.

BUILDING AND LOAN LAW. 1. Members may apply entire payment on one share until it matures, if by-laws permit. 2. No credit can be given on a loan until a share has matured and has been cancelled. 3. No prescribed form for advance payment certificates. 4. Assessment may provide for interest upon advance payment certificates not exceeding rate of profits. 5. A by-law undertaking to set aside any different reserve fund than provided by Sec. 24 is invalid.

May 27, 1909.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—I have given some consideration to the inquiries submitted in your letter of the fourth instant relative to the Building and Loan Law. The questions submitted by you are as follows:

First. Can an association apply the total credits received on a borrowing member's account to the repayment of one or more shares and thus reduce the loan by the amount so paid?

Second. Can the monthly dues paid by a borrowing member, when they equal the value of a share, be applied to a reduction of the loan so as to permit a further loan to the member without his subscribing for additional shares?

Third. Can an association receive an amount of money in excess of $2.00 per month per share without the issuance of advance payment certificates?

Fourth. Can an association provide by by-law for the allowance of interest upon an advance payment certificate without a provision for an adjustment of profits?

Fifth. Can an association maintain a reserve or contingent fund separate from the reserve fund provided for by the statute to be used to equalize dividends, or for such other purposes as the board of directors may order?

Taking up these questions in the order stated, will say in relation to the first that Section 8 of the Building and Loan Law (Act 50, Public Acts of 1887) prescribes the manner of making loans and states, in part:

"Borrowers shall be required to give real estate security, unincumbered except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares borrowed upon as collateral security for the repayment of the loan:"

Section 5 provides:

The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, *not exceeding two dollars per month on each share:* Provided, That the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. . . . Said shares shall be deemed personal property, transferable upon the books of the association in the manner prescribed in the by-laws, *and shall be paid off and retired as the by-laws shall direct."*

The above question cannot arise in the case of associations issuing shares in series. The provision above quoted, that the amount paid by the shareholder shall not exceed two dollars per month per share, seems to me to refer to the amount which the shareholder may be permitted to pay at one time rather than to the amount which he may be permitted to apply to any one share. Inasmuch as there is nothing in the statute which even inferentially prohibits the borrower from having his payments applied so that one or more shares shall be retired at a different time from other shares held by him, I can see no reason why the society should not pass a by-law which would permit the shareholder to apply the payments made by him, when they equal the value of one share, to the cancellation of that share, thus reducing the loan by the amount of that share and at the same time lessening the number of shares upon which payment is to be made. Certainly, whatever pecuniary advantage would arise from such a situation would be in favor of the association, and the borrower being a party to it, could not complain.

In response to the second inquiry would say that it is one of the underlying principles of the Building and Loan Law that no credit can be given on a loan until a share has matured and has been cancelled, when the amount of that share may then be applied to the loan. I am therefore of the opinion that even though the payments made by a shareholder and borrower should exceed the value of one share he could not procure an additional loan without subscribing for additional shares for the reason that until some of the shares pledged as collateral for the first loan were cancelled there could be no credit upon that loan.

Thompson on Building Associations, Section 210.

In answer to your third question would say that the statute does not prescribe the form of the advance payment certificates. Any form of writing, whether it be a receipt, a credit upon a pass book or a formal certificate which the by-laws and rules of the association recognize as an acknowledgement of advance payment, would satisfy the provisions of the statute relative to the issuance of advance payment certificates.

In reply to your fourth question will say that I am of the opinion that an association can provide for a fixed rate of interest upon advance payment certificates provided this rate of interest does not exceed the rate of profits upon the shares of stock of the association. The right of making advance payments is secured in this state by the provisions of Section 5 above quoted, and in speaking of advance payments of this character Thornton and Blackledge in their work on Building and Loan Associations, Section 147, say:

"No doubt exists of the right of the association to do this, and it

may, and often does, allow a moderate rate of interest upon such advance payments, and it may even secure a repayment, if the enterprise should fail, of such proportion of the prepayment as may not have accrued at the time of such failure."

In 6 Cyc. page 127 it is stated:

"Where the statute so provides, or does not expressly prohibit, a member may pay in advance the face value of his stock and receive interest or dividends thereon, or may pay any such sum as with anticipated accretions will make the stock par at the end of the estimated period."

In a note to Hohenschell v. Savings Association, 4 Am. & Eng. decisions in equity, page 9, it is said:

"It seems to be now settled by the preponderance of authority that a building and loan association under its general power, may issue, besides the ordinary form of installment stock, shares which have been either fully or partly prepaid, and stipulate for the payment of a specified dividend thereon, as long as that does not exceed a pro rata share of the profits (or possibly, in the case of fully paid stock, the legal rate of interest, if the profits should fall below that) as long as the holders of such stock are given no undue advantage over the holders of the ordinary stock." Citing numerous English and American cases. See Johnson v. Loan Nat'l Ass'n, 82 Am. St. Reps., 257, 260.

In answer to your fifth question will say that Section 24 of the Building and Loan Law provides:

"The gross earnings of every building and loan association shall be ascertained at least once in each year, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. From the balance of the earnings there shall be set aside at least one per cent annually as a reserve fund, until such fund reaches five per cent of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by such association from depreciation of securities or otherwise. After providing for the expenses of the association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of shareholders as the association by its by-laws shall provide."

It will be seen from the above section that the statute does not contemplate a reserve fund in excess of five per cent of the outstanding loans. A building and loan association is a mutual organization and it is contemplated that the profits shall be distributed to the members. The statute expressly provides that after deducting the reserve fund and the running expenses the balance shall be apportioned to the shareholders. I am of the opinion that any by-law undertaking to set apart out of the profits any other or different reserve fund than that provided in Section 24 would be invalid.

I am returning the statement of Mr. Rich herewith.

Very respectfully yours,

JNO. E. BIRD,

Attorney General.

BANKING LAW. A bank organized in a village which subsequently becomes located in a city by the extension of the corporate limits of the city by an act of the legislature, is not required to increase its capital stock to the amount specified in the general banking law for cities of that population.

A state bank has no authority to establish branches at which a general banking business is conducted, but may establish agencies for the receiving and paying out of deposits and issuing exchange.

May 27, 1909.

Hon. Henry M. Zimmermann, Commissioner of the Banking Department, Capitol, Lansing, Michigan:

Dear Sir—I am in receipt of your letter of the 29th ultimo in which you state that a bank organized with a capital of $20,000,00 in a village adjacent to a large city subsequently became located within the corporate limits of the city by an extension of the boundaries of the city to include the territory formerly embraced within the limits of the village; the bank thus coming into the city with a capital less than is required by statute of banks organized within the city. You also state that it is now suggested that this bank may establish branches within the city and request an opinion upon the following:

First, Whether or not you have authority to require a bank organized in a village, when it became located in a city by the extension of the corporate limits of the city, to increase its capital in accordance with the number of inhabitants of the city.

Second, Whether or not a state bank has authority to establish branches in the city or village in which it is authorized by its articles of incorporation to transact business.

In reply will say that Section 1 of the General Banking Law (Section 6090 C. L.) provides for the establishment of commercial and savings banks in cities and villages in the state and prescribes the minimum capital that banks may have, based on the population of the city or village in which the bank is to be located.

Section 2 of the act provides that the articles of incorporation shall specify among other things:

"The county and city or village wheresuch bank is to be located and to conduct its business;"

Section 7 provides that upon compliance with the statute the Commissioner of the Banking Department shall give the bank a certificate under his hand and official seal that the bank has complied with the statute and is authorized to commence business.

The contingency arising in the case of the bank to which you refer apparently was not anticipated by the framers of the General Banking Law as that law contains no provision requiring a bank established within a village which becomes located in a city by reason of the extension of the corporate limits of the city to increase its capital in accordance with the population of that city. Neither is there in the Banking Law any provision requiring a bank after its organization within a city of a certain population to increase its capital as the population of the city increases.

The bank upon complying with the provisions of the statute was given the right by the state to conduct its business within the village. It did not voluntarily remove to the city but became located therein by operation of law through the extension of the corporate limits of the city. The provision of the statute requiring banks to have a certain capital according to the population evidently has reference to the establishment of banks in the first instance. As heretofore stated, a bank once lawfully established with the required capital according to the population of a city is not required to increase its capital although the population of the city may increase to such an extent that a new bank could not be established therein without having a much larger capital. A careful consideration of the provisions of the General Banking Law leads me to the conclusion that a bank once lawfully established in a village with the required capital in accordance with Section 1 of the General Banking Law is not required under the provisions of that law to increase its capital when it becomes located within a city by reason of the extension of the corporate limits of the city to include the village.

For answer to your second question I would say that no authority to establish branches is conferred upon banks by any provision of the laws of this state. In the absence of statute a bank has no authority to establish branches at which a general banking business is conducted.

MaGee on Banks and Banking, page 41,
Atty. Gen. v. Oakland Co. Bank, Walk. page 90.

While a bank has no authority to establish branches unless expressly authorized by statute so to do, it seems that it may have an agency for the transaction of some part of its business in the city or village designated in its charter as the place where the bank is to be located and to conduct its business.

In MaGee on Banking, page 41, are compiled the provisions in force in the different states relating to this subject and of this state it is said:

"There is no law authorizing the establishment of branches. Agencies are permitted which are restricted in their operations to receiving and paying out of deposits and issuing exchange."

and several instances of banks located in the cities of Detroit and Lansing having established agencies of this character are noted.

The agencies established by the banks at the cities indicated have been conducted by the banks for some time and the right of the banks to establish such agencies does not appear to have been heretofore questioned by the Banking Department or any officer of the state. In view of the foregoing I am of opinion that a bank may establish agencies of the character of those indicated herein within the limits of the city or village in which the bank is located. Inasmuch as a bank originally located in a village, and which becomes located in a city by the extension of the corporate limits of the city, has authority to conduct its business within the city, it would have the same right to establish agencies of this character as a bank originally organized within the city.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

PARTNERSHIP ASSOCIATIONS, LIMITED. Cannot now file articles of association required by Section 14 Act 244 Public Acts 1903 to be filed before January 1, 1904.

May 27, 1909.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of the 2d instant in which you ask whether partnership associations limited who did not comply with the provisions of Section 14 of Act 244, Public Acts of 1903, relative to filing copies of articles etc. with the Secretary of State before January 1st, 1904, may properly be permitted to file such articles now.

In reply thereto will say that Section 14 of Act 244, Public Acts of 1903, provides as follows:

"Every partnership association heretofore organized, is required to file a copy of its statement in writing or articles of association, verified by the oath of the secretary of the board of managers or certified by the register of deeds of the county in which said statement or articles were recorded, as a full and true copy of the same with its date of record together with all amendments to such statement or articles if any have been made and recorded, in the office of the Secretary of State of this State on or before the first day of January, nineteen hundred and four."

The same section also provides a penalty for failure to comply with the above requirement.

Section 16 of the same act permits partnership associations:

"now existing, organized under act number one hundred ninety-one of the Public Acts of eighteen hundred seventy-seven, as amended, being chapter one hundred and sixty of the Compiled Laws of eighteen hundred and ninety-seven, may at any time within two years from and after the first day of July in the year nineteen hundred and three reorganize under any act providing for the incorporation of companies for a purpose or purposes for which such association was organized: . . . . Provided, That the period for the existence of the corporation so organized shall be coincident with the period of existence remaining to the partnership association at the date of its reorganization as above provided."

It seems clear to me from the above provisions that it was contemplated that partnership associations limited organized prior to the taking effect of Act 244, Public Acts of 1903, should comply with the provisions of Section 14 within the time limited, or if they did not desire to comply with the provisions of Section 14, should take advantage of the enabling section relative to incorporation under the corporation laws of this state as provided in Section 16. I am therefore of the opinion that at this time partnership associations limited organized prior to the taking effect of Act 244, 1903, should not be permitted to file their articles of association in your office.

Very respectfully yours,

JNO. E. BIRD,

Attorney General.

BANKING LAW. Savings banks have no authority to invest their funds in notes and securities under subdivision (i) of Sec. 27, etc., where the security for the same is deposited with a trust company.

May 27, 1909.

Hon. Henry M. Zimmermann, Commissioner of the Banking Department, Capitol, Lansing, Michigan:

Dear Sir—I am in receipt of your letter of the 29th ultimo in which you ask whether or not notes and securities representing fractional parts of large loans where the security is deposited with a trust company are legal investments for a state bank under Section 27 of the General Banking Law (Section 6116 C. L.) as amended by Act 322 of the Public Acts of 1907.

In reply would say that this section provides in Subdivision (i) that a certain proportion of the savings deposits of the bank shall be invested by the board of directors as follows:

"Upon notes or bonds secured by mortgage lien upon unencumbered real estate worth at least double the amount loaned; the remainder of such deposits may be invested in notes, bills or other evidences of debt, the payment of which is secured by the deposit with the bank, of collateral security consisting of personal property or securities of known marketable value, worth ten per cent more than the amount so loaned and interest for the time of the loan; or may be invested in notes, bills or other evidence of debt, the payment of which is secured by such property or securities deposited in a collateral deposit company organized under the laws of this state;"

It is evident that the notes and securities in question come within the class last referred to in this subdivision, to wit: "notes, bills or other evidences of debt, the payment of which is secured by such property or securities deposited in a collateral deposit company organized under the laws of this state."

This provision was incorporated in this subdivision of Section 27 by Act No. 322, Public Acts of 1907. The same Legislature enacted a law providing for the incorporation of "safety and collateral deposit companies," the same being Act No. 240 of the Public Acts of 1907, having power under the provisions of Section 9:

"To receive on deposit, in trust, any personal property deposited with it by individuals, partnerships or corporations as collateral security for the payment of bonds, or other obligations issued by such individuals, partnerships or corporations, and to enter into and execute any instruments in writing necessary and proper to carry such trusts into effect."

Section 11 places every corporation organized under the act and engaging in this branch of the business under the supervision of the Commissioner of the Banking Department.

These acts were passed by the same Legislature; are in pari materia and must be construed together. Thus construed, the collateral deposit companies organized under the laws of this state referred to in the amendment to the General Banking Law must be held to refer to collateral deposit companies organized under the provisions of Act 240

of the Public Acts of 1907. I am informed that at this time there are no collateral deposit companies organized in this state under that act. Consequently, I am of opinion that savings banks have no authority to invest their funds in notes and securities under subdivision (i) of Section 27 of the General Banking Law where the security for the same is deposited with a trust company.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

PLATS—CITIES AND VILLAGES. Cities and villages having authority, under their characters, may vacate streets, alleys and public places.

May 27, 1909.

Hon. O. B. Fuller, Auditor General, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of the 7th instant in which you request the opinion of this Department as to whether town plats legally made, recorded and filed can be vacated without an order of the court as provided in Sections 3376 et seq., Compiled Laws of 1897.

In reply thereto will say that the purpose of dedication and the recording of plats is to secure to the public the use of the streets and alleys therein laid out. Nearly every city and village charter with which I am familiar provides for vacating streets and alleys and other public grounds by vote of the common council. In the fourth class city act this is provided for in Section 113 of the pamphlet law, Section 3068 of the Compiled Laws. In the general village law it is provided for in Section 98 of the pamphlet, Section 2781 of the Compiled Laws. The Supreme Court has held that these statutory provisions for the vacation of streets and alleys are concurrent with the provisions in Section 3376 et seq.

In Case v. Frey, 24 Mich. 251, it is said:

"The statutes conferring this power on the circuit courts contain no limitations in regard to cases where there is another remedy. When a statute is intended to be general in its operation, and gives authority to the principal courts of original jurisdiction to act on the petition of all persons having occasion for such action, it cannot be assumed that any part of the state is to be excluded from this policy without plain language leading most naturally to that result. All persons must be left on an equality of privileges, unless the contrary intention is manifest. There is nothing unusual in giving a choice of two or more remedies to obtain similar ends. And it is worthy of some consideration whether the power given to the village authorities is in all respects co-extensive with that given by the town plat act to the circuit courts. Be this as it may, we think there is no repugnance between the systems, and that the power remains as if the village charter had been silent. No similar proceeding was pending."

In re Albers' petition, 113 Mich. 640, it is said:

"We think there is nothing in this or the other charter provisions that

supplants the law conferring jurisdiction upon the courts in cases of this character."

In view of the above I am of opinion that city or village councils having authority under their charter may properly vacate streets, alleys and other public places dedicated by any plat just as effectually as can be done by the Circuit Court under the provisions of Section 3376 et seq. of the Compiled Laws. Whenever such vacation has taken place, before a replat of the same territory is approved, proof should be required that the streets, alleys and other public places dedicated by the previous plat have been vacated in accordance with the provisions of the municipal charter.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

CORPORATION LAW—ANTI TRUST LAW. Secretary of State has no right to revoke certificate of authority of a corporation for a claimed violation of Anti-trust Law.

May 27, 1909.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—We are in receipt of your letter enclosing copy of petition by Ralph E. Aldrich and others relative to the National Cash Register Company of Dayton, Ohio, and requesting the opinion of this Department as to whether it is your duty to revoke a certificate of authority of the National Cash Register Company by reason of the provisions of Section 3 of Act No. 255 Public Acts of 1899. The section referred to provides as follows:.

"Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which the defendant resides or does business, or other proceedings by injunction or otherwise. The Secretary of State shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this State."

The language of the last sentence of the above section would seem to give the Secretary of State the power to determine whether any corporation or association had violated any of the provisions of Act 255, and if so to revoke its certificate of authority. The statute makes no provision for hearing to determine the question, and there is nothing on file in the office of the Secretary of State which would show conclusively a violation of any of the provisions of the act.

We are of the opinion that the rule applied in the cases of Robinson v. Miner, 68 Mich. 549, and Dunham v. County Treasurer, 80 Mich. 648, applies here. It was there held that the county treasurer could not require a new liquor bond, for the reason "that no method was provided

of getting at the facts by hearing before anyone." In the Dunham case the Court said:

"Such important powers cannot be exercised by the county treasurer arbitrarily, nor can he, at his discretion, determine the proceedings which are necessary to give him the jurisdiction to act. These can only be provided by the Legislature."

We are therefore of the opinion that the Secretary of State would have no right to revoke the certificate of authority of a corporation for claimed violation of the provisions of Act 255, Public Acts of 1899.

Very respectfully yours,

JNO. E. BIRD,

Attorney General.

SCHOOL LAW. Township treasurer should pay tax to the district treasurer.

May 27, 1909.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I have the communication of F. E. Searl, County Commissioner of Schools of Ingham county, which you referred to this Department. It is stated that in a fractional school district situated in four townships there was more money on hand at the close of the last school year than was paid in teachers' wages. That notwithstanding this fact a mill tax was levied and collected in three of the townships, which amount has been paid to the township treasurer of the township in which the school house is located. That the said township treasurer now refuses to pay to the treasurer of said school district the amount of the mill tax so levied and collected. It also appears that this amount was paid by the various taxpayers without protest. It is asked if it is the duty of the township treasurer to pay this amount of money to the district treasurer upon presentation of proper voucher therefor.

In reply thereto would say, since the taxes have been paid without protest, they should be paid to the district treasurer by the township treasurer whenever a proper voucher therefor is presented. The taxes having been paid voluntarily, it is the duty of the township treasurer to pay same to the district treasurer, as it is not the duty of the township treasurer to determine the legality of the tax.

Very respectfully,

JNO. E. BIRD,

Attorney General.

INSURANCE LAW. 1. A life insurance company doing business in Michigan cannot stipulate in its Michigan policies that the contract shall be governed by the laws of another state.

2. A life insurance company doing business in Michigan cannot stipulate in its policies that the policy will be void by the non-payment of a premium note when due.

May 27, 1909.

Hon. James V. Barry, Commissioner of Insurance, Lansing, Michigan:

Dear Sir—I have had under consideration the policies of the Lincoln National Life Insurance Company of Indiana which have been offered to you for approval. Two questions arise in relation to these policies.

First. Can a foreign life insurance company doing business in this state stipulate in its policies that the policy contract shall be governed by the laws of another state?

Second. Can a life insurance company doing business in Michigan lawfully stipulate in its policies that the policy will be avoided by the non-payment of a premium note when due?

In the application it is stated:

"That this application . . . shall constitute the entire contract between the parties hereto and shall be construed according to the laws of Indiana."

In answer to this question will say that it is my opinion that the statutes of this state governing life insurance and the issuance of life insurance contracts, and particularly the standard provisions law (Act 187, Public Acts of 1907) lay down a rule of public policy governing the issuance of life insurance policies in this state. The statutes were enacted for the benefit of the policy holders. The construction placed upon these statutes by the courts of this state is as much a part of the statutes as the enactments themselves. The standard provisions law prescribes substantially the conditions that must be contained in a policy in this state, and to permit a company to issue contracts which, although they contain substantially the language required by law, by their terms purport to subject this langauge to the interpretation of the courts of another state, would be entirely contrary to the spirit of these enactments. I do not think you should approve for issuance in this state any insurance policy containing a clause such as that above quoted.

The policies submitted also provide at page 3 as follows:

"If any note or other obligation given for a premium, or any part thereof, on this policy shall not be paid when due this contract shall be and become null and void without any notice or action of the company notwithstanding any receipt which may have been given for such premium except as herein provided."

Section 1 of the standard provisions law provides:

"No policy of life insurance shall be issued in this state, unless the same shall contain the following provisions:

First, A provision that all premiums shall be payable in advance, either at the home office of the company or to an agent of the company,

upon delivery of a receipt signed by one or more of the officers who shall be named in the policy;"

The clause above quoted seems to me to provide for an extension of time for the payment of premiums while the statute provides that the policy shall by its terms make the premium payable in advance. It seems clear to me that the purpose of this statute was to prevent the company from providing in its contract that a premium note unpaid when due would avoid the policy. Read in connection with Subdivision 2 of Section 1, permitting a company to collect interest during the period of grace and the provisions for re-instatement, I can see no other reasonable interpretation for the clause in question than that which prohibits the taking of premium notes and then declaring a forfeiture upon the non-payment thereof. I am of the opinion that the clause in question should be disapproved.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

MILITARY LAW. Is it the intention of the law to exempt private property which is rented for the use of the state, from taxation, under Sec. 64.

May 27, 1909.

General J. H. Kidd, Quartermaster General, Capitol, Lansing:

Dear Sir—I have your communication of May 26th, referring to Section 64 of the new Military Law. You ask:

"Would the exemptions provided for in this section, apply to buildings owned by private individuals or corporations composed of private individuals and rented for the use of companies or other organizations of the National Guard as armories, or would they apply only to armories owned by the state, by municipalities, counties, or National Guard companies? In other words, is it the intention of the law to exempt private property which is rented for the use of the state?"

In reply thereto would say that question presented is one which, in view of the language of the entire act, would seem to be subject to some doubt. It is not entirely clear whether the exemption was intended to apply to all armories, whether leased or owned by the State, or only those erected under authority of the Military Law. Undoubtedly this question will be eventually presented for the consideration of the courts. In view of this fact, I would not care to express an opinion in advance of the decision of the court. It would seem proper, in view of all the circumstances, to place such property as that referred to in your communication upon the tax rolls, in order that the extent of the exemption referred to in the act may be properly determined.

Very respectfully,
JNO. E. BIRD,
Attorney General.

LIQUOR LAW. The tax of $50.00 required under Sec. 1, for a warehouse established by wholesale liquor dealers should be paid to the county treasurer, the same as other liquor taxes.

The bond of wholesale liquor dealers establishing warehouses under Sec. 1, should be in the form prescribed by Sec. 8.

May, 27, 1909.

Hon. Charles H. Farrell, Kalamazoo, Michigan:

Dear Sir—In response to your request over the telephone, as to whether the tax of $50 required to be paid under Section 1 of the General Liquor Law for a warehouse established by wholesale liquor dealers is required to be paid to the county or state, I desire to say that the provision authorizing the establishment of such warehouse upon payment of the tax was incorporated in Section 1 of the general liquor law by amendment made by the legislature in 1903, (Act No. 62). Section 4 of the general liquor law requires every person intending to engage in any business named in Section 1 of the General Liquor Law to pay to the county treasurer in advance the tax required by said Section 1 for the ensuing year. This necessarily includes the tax of $50 for establishing warehouses, and that tax should therefore be paid to the county treasurer, the same as other liquor taxes.

With reference to the bond required in such cases, would say that the form prescribed in Section 8 of the General Liquor Law is the only form of bond authorized and required under the provisions of that law. Consequently, the bond required of wholesale liquor dealers establishing warehouses under the provisions of Section 1 should execute a bond in the form prescribed by said Section 8.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

MARRIAGE LAW. The pastor of a church in this state, being a regularly ordained minister of the gospel, may perform marriage ceremony, although not a naturalized citizen.

May 28, 1909.

Rev. F. James Grant, Detroit, Michigan:

Dear Sir—I am in receipt of your undated letter in which you desire to know whether the fact that you are not a naturalized citizen will prevent your performing a marriage ceremony. We note that you are a regularly ordained minister and are the pastor of the Kercheval Avenue Methodist Episcopal Church of Detroit.

If you are a pastor of a church in this state and are a regularly ordained minister of the gospel, there is no legal impediment to your performing a marriage ceremony.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

INDUSTRIAL HOME FOR GIRLS. Children who cannot be received at home because of quarantine or crowded conditions, cannot be maintained at state expense outside of home.

June 9, 1909.

Hon. Robert A. Smith, Judge of Probate, Jackson, Michigan:

Dear Sir—Replying to your letter of the 2nd inst., with reference to girls refused admission to the Industrial Home at Adrian on account of quarantine; will say that it is our view that children do not become a charge against the State until they are delivered at the Home. In other words, the State has no right to incur expense for their maintenance except in the place provided by law for their care and custody. We are advised that the counties' authorities were all notified that the Home was under quarantine, and also that it was so crowded that girls could not be received there. The situation that has arisen does not seem to be one that was contemplated by the statute.

If your county has no detention home for juveniles, it is because your board of supervisors have failed to comply with the express provisions of the statute.

I am of the opinion that there is no method by which the State would have any authority to pay the expense of keeping girls committed to the State Industrial Home outside of the institution, while the institution is quarantined or while there is no room for them to be properly cared for.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

SCHOOL LAW—SCHOOL TREASURER'S BOND. School treasurer must file a new bond each year.

June 9, 1909.

The Grinnell—Row Insurance Agency, Grand Rapids, Michigan:

Gentlemen—We are in receipt of your letter of the 2nd inst., in which you desire to know whether Section 25 of Act 91 Public Acts of 1907 requires school treasurers to file a new bond each year, or whether they can file a bond for their entire term of office. The provision in question reads as follows:

"It shall be the duty of each school district: First, To execute to the district and file with the director within ten days after his election or appointment and each year thereafter during his term of office, a bond in double the amount of money on hand plus the amount to come into his hands as such treasurer during the ensuing year of his term of office as near as the same can be ascertained, with two or more sureties, . . . or he may furnish the bond of such surety company authorized to do business in this state, the premium on which surety bond may be paid by the district."

The language above used is not susceptible of any other construction

than that the district treasurer must file a bond each year during his term of office. The statute in question requires the form, the penalty and the sufficiency of the sureties to be subject to the approval of the moderator and director, and the penalty of the bond is subject to change each year, as the amount of money that will come into the treasurer's hands varies.

I am of the opinion that the statute above quoted does not authorize a renewal of bond of district treasurers; but requires the filing of a new bond and a new fixing of the penalty and approval thereof by the moderator and director of the district each year during the treasurer's term.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

HOME FOR FEEBLE MINDED AND EPILEPTIC. Children whose parents remove from the state are not entitled to be maintained at the home.

June 9, 1909.

Dr. G. L. Chamberlain, Medical Superintendent, Michigan Home For Feeble Minded and Epileptic, Lapeer, Michigan:

Dear Sir—We are in receipt of your letter of the 28th ult., in which you inquire as to your duty with reference to children whose parents were bona fide residents of this state at the time of their commitment to the Home for the Feeble Minded, but who subsequently removed from the state.

It is the general rule of law that the domicile of a minor child, not emancipated, follows that of its parents. As you state in your letter, it is the clear intent of the law governing the Home for Feeble Minded and Epileptic that the benefits of the institution shall be extended only to bona fide residents of this state. At least in respect to indigent patients, it stands on no different footing than a county almshouse, and I am of the opinion that the State should not maintain at the institution minor children whose parents have established a permanent residence outside of the state.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

AUDITING OF VOUCHERS AND ACCOUNTS OF STATE INSTITUTIONS. Have the boards of control of the several state institutions the authority to appoint, outside of their own number, an auditing committee consisting of one or more persons, delegating the power to said committee to sign or initial the vouchers mentioned in the act of 1909.

June 9, 1909.

Hon. Fred Z. Hamilton, General Accountant, Lansing, Michigan:

Dear Sir—I have your communication of June 9th, which reads in part as follows:

"This department has received several inquiries as to the provisions of enrolled act No. 71 passed by the Legislature of 1909. The question raised is whether the boards of control of the several state institutions have the authority to appoint, outside of their own number, an auditing committee consisting of one or more persons, delegating the power to said committee to sign or initial the vouchers mentioned in said enrolled act."

The statute to which you refer requires that:

"Said vouchers shall be carefully compared and checked with the abstract by an auditing committee or by members of the board of control or governing board of said institution. The voucher which is to be transmitted to the auditor general shall be signed or initialed by one member of the auditing committee, board of control or governing board making such comparison."

The form of certificate prescribed in said statute which the abstract must contain is as follows:

"We hereby certify that the vouchers abstracted herein, numbered .....to.....inclusive, with dates, names and amounts, agreeing with this abstract, aggregating $....., have been carefully examined and checked by a committee of this board and one of the duplicate vouchers personally signed or initialed by a member of such examining committee," etc.

The purpose of this statutory requirement is to insure that each voucher shall be compared and checked with the abstract and that the voucher transmitted to the Auditor General shall be signed or initialed by a member of the board of control or governing board of each institution. There is no authority for the delegation of this duty to persons outside the membership of the board of control or governing board of the institution. It is action on the part of the members of such board that is required. The auditing committee authorized to be appointed must be from among the members. The duties required must be performed either by the auditing committee appointed for that purpose from among the members, or in the absence of the appointment or selection of such committee, such duties must be performed by the members. Any other construction would operate to defeat a wise and salutary statutory provision. It is, therefore, my opinion that the board of control or governing board of any institution has no authority to appoint an audit-

ing committee under authority of the statute in question except from among its members.

Very respectfully,
JNO. E. BIRD,
Attorney General.

LIQUOR LAW. The proprietors of a hotel have no right to serve liquors during meals in the dining room on Sundays and holidays.

June 10, 1909.

T. A. Walker & Son, St. Joseph, Michigan:

Sirs—I am in receipt of yours of June 8th advising me that you are the proprietors of a hotel in St. Joseph in which there is a bar for the sale of liquors and that you have been in the habit of serving liquors to your guests during meals in the dining room, and you ask whether this is allowable under the license law on Sunday and holidays.

Will say in reply to this inquiry that you have no right to sell on Sundays or holidays whether it is in the bar or dining room or in your private room. You have no advantage by reason of your running a hotel and serving meals to guests.

Very truly yours,
JNO. E. BIRD,
Attorney General.

STATE OIL INSPECTOR—ILLUMINATING OILS. Inspector not liable to prosecution for acting as "spotter" in purchasing oils. The fact that the inspector has purchased the oil in violation of the statute does not preclude his making complaint or testifying.

June 10, 1909.

Hon. Frank S. Neal, State Inspector of Oils, Northville, Michigan:

Dear Sir—We are in receipt of your letter of the 25th ultimo in which you state that we seem to have misunderstood your former letter in framing our reply to your letter, and now state that Judge Jefferies' contention is that when a deputy goes into a store with a kerosene can and makes a purchase of gasoline in that can, which does not comply with the provisions of the law, that the deputy is also amenable and that the complaint is therefore questionable.

Section 1 of Act 178 of the Public Acts of 1907 provides:

"Every person dealing at retail in gasoline, benzine or naphtha shall deliver the same to the purchaser only in barrels, casks, packages or cans painted vermillion red and having the word 'gasoline,' 'benzine,' or 'naphtha' plainly stenciled thereon. No such dealer shall deliver

kerosone in a barrel, cask, package or can painted or stenciled as hereinbefore provided. Every person purchasing gasoline, benzine or naphtha for use shall procure and keep the same only in barrels, casks, packages or cans painted and stenciled as hereinbefore provided. . . ."

It will be noted that two separate and distinct offenses arise under this section,—the offense of the dealer in "delivering to the purchaser" contrary to the statute, and the offense of the buyer in "purchasing for use." These offenses cannot be combined in one complaint. They require wholly different proofs to support them and are in no way interdependent. The offense of the dealer consists in "delivering to the purchaser" regardless of what use the purchaser makes of the article purchased. Even if the inspector can be said to have committed the offense of "purchasing for use" at the same time that the dealer "delivered to the purchaser," it would in no way affect the offense of the dealer. The fact of the sale being made to an inspector or detective for the purpose of instituting a prosecution in no way affects the criminality of the offense of the seller.

See:

People v. Everts, 112 Mich. 194,
People v. Rush, 113 Mich. 539,
People v. Liphardt, 105 Mich. 80.

Aside from the question which might arise as to whether the inspector was "purchasing for use" within the meaning of the statute, we think the inspector is not amenable to prosecution. The practice of inspectors, detectives and spotters procuring evidence of the violation of statutes of the character of this one has long been followed by both the state and federal authorities, and this practice is peculiarly necessary in the enforcement of a statute like the one under consideration where the ordinary purchaser and the dealer are both liable to punishment. An ordinary purchaser in the manner prohibited by statute would not be likely to make a complaint that in its very nature might involve himself in the criminal prosecution. The reason and justification sustaining prosecutions where the purchase has been made in the prohibited manner by an inspector or detective is well stated in a note to:

Connor v. People, 25 L. R. A. 341,

as follows:

"That the offense following the solicitation is merely one of a kind habitually committed and the solicitation merely furnished evidence of the course of conduct."

All that can possibly be claimed for the fact that the offense was committed at the solicitation of an inspector, spotter or detective is that upon the trial of the cause in a court of record the respondent would be entitled to an instruction to the jury with reference to the complaining witness "that they might consider that fact as affecting his credibility."

See: People v. Rice, 103 Mich. 358.

The fact, that your inspectors procured the violation of the statute by purchasing the goods in the manner prohibited by law and for the purpose of instituting a prosecution, in no manner affects their right to make a complaint under the statute or to testify against the respond-

ent upon the trial of the cause, and would not render your inspectors amenable to prosecution.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

BANKING LAW. A state bank may legally be organized in this state by the stockholders of national bank.

June 10, 1909.

Hon. Henry M. Zimmermann, Commissioner of the Banking Department, Capitol, Lansing:

Dear Sir—I am in receipt of your communications of the 29th ultimo requesting an opinion upon the question of whether or not a state bank may legally be organized in this state by the stockholders of a National Bank under a plan substantially as follows:

The stockholders of the national bank enter into an agreement with the officers of the national bank by the terms of which the stockholders agree that the officers may take the necessary steps to organize a state bank with a prescribed capital, the shares of which may be subscribed for in the first instance by such persons as may be selected by the officers, but when paid for shall be held in the names of such persons as from time to time shall be the officers of the national bank, as trustees, which said trustees may exercise during the life of the trust all the rights and powers of absolute owners of the stock except to the extent that they may be ordered otherwise by express directions in writing signed by a majority of at least two-thirds in interest of the persons beneficially interested in the stock. The dividends upon said stock are to be received by the trustees and paid by them to the national bank for distribution among the stockholders of the national bank pro rata according to their ownership of record of shares of stock in the national bank, the trust to continue as long as the national bank shall continue to do business unless sooner terminated by a request in writing of a majority of at least two-thirds in interest of the capital stock of said bank. The necessary capital for the state bank is to be furnished by a special or extra dividend declared by the national bank. It is provided that the stock in the state bank shall be held by the trustees and that no person shall have the right to transfer his interest therein otherwise than by the transfer of the ownership of stock in the national bank upon the books of the latter. The only evidence of the beneficial interest of any person in the stock of the state bank is that given by an endorsement on the back of the certificates of stock of the national bank to the effect that the owner of the shares represented by that certificate is beneficially interested in common with all other stockholders of the national bank in a pro rata amount of the capital stock of the state bank and that said beneficial interest cannot be sold or transferred otherwise than by the transfer of the shares of stock represented by the certificate upon the books of the national bank, and that the beneficial interest in the stock of the state bank shall pass with the transfer of the shares of the na-

tional bank represented by the certificate. It is further provided that no person shall be eligible to the office of director of the state bank who is not a director of the national bank.

For reply to your inquiry I would say that the General Banking Law of this state contains no provision that would prohibit the stockholders in a national bank from organizing a state bank upon compliance with the provisions of the General Banking Law. Neither is there in that law any provision expressly prohibiting the stockholders in a state bank from entering into an agreement in substantially the form indicated above. The agreement is not between the national bank and the state bank, but is between the stockholders in those banks. As between the state bank and the state, any agreement of this character between the stockholders of the bank would be wholly ineffectual to prevent the state from exercising a supervisory control over the affairs of the bank, or enforcing the liability of the stockholders, in accordance with the provisions of the General Banking Law. It is true that there are cases holding that agreements between stockholders in corporations imposing a permanent restraint upon the alienation of their shares of stock are invalid, but under the terms of this agreement a stockholder may transfer his shares of stock in the state bank provided he also transfers his shares of stock in the national bank. It does not seem that there is in that case such a restraint upon the alienation of the shares as would render the agreement invalid.

Upon due consideration of the matter I am of opinion that, so far as the State is concerned, the plan outlined for the organization of a state bank is, in its general features, valid under the General Banking Law of the State. I express no opinion, however, upon the validity of the details of any particular plan for such organization, leaving those questions to be determined when it is sought to organize a state bank upon this plan and the details of the proposed plan of organization are before me.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

BANKING LAW—CONSTITUTION. Bank examiners in service when Act of 1909 increasing salaries took effect, not entitled to increase.

June 30, 1909.

Hon. Henry M. Zimmermann, Commissioner of Banking Department, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of June 17th in which you submit the amendment to Section 38 of the Banking Law relative to the salaries of examiners, and request the opinion of this Department as to whether the examiners who have already been employed by the Banking Department for three years will be entitled to the increase in their salaries when the amendment becomes operative.

In reply thereto will say that Section 3 of Article XVI of the revised constitution provides, in part:

"Salaries of public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment."

In determining the question submitted it is important to ascertain first whether a bank examiner is a public officer within the meaning of this section of the revised constitution. Mechem defines a public office to be:

"The right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." (Mechem on Public Officers, Sec. 1.)

And he points out two essentials: First, The delegation of sovereign functions: Second, Powers created and conferred by law. (Sec. 4 and 5.)

In Section 9 he states:

"Any man is a public officer who hath any duty concerning the public, and he is not the less a public officer where his authority is confined to narrow limits; for it is the duty of his office and the nature of that duty which make him an officer, and not the extent of his authority."

Section 38 of the Banking Law provides for the appointment of bank examiners, fixes their salaries and requires them to file a bond of ten thousand dollars. Section 39 authorizes the examiners to examine banks and to examine the officers, agents, clerks, customers or depositors upon oath, and makes false swearing before such examiner perjury. Section 40 requires the examiner to take an oath to keep secret all facts and information obtained in the course of his examinations. Section 41 authorizes the commissioner to ask for the appointment of a receiver in case of a refusal of a bank to submit to an examination by an examiner.

True, the statute, in Section 38, states that the commissioner shall "employ from time to time such examiners," but the fact that the appointment of a bank examiner is designated as an employment does not change the nature of the duties prescribed by law. Clearly, the statute in question delegates sovereign functions to the examiner and the powers are created and conferred by law, the two essentials to the creation of an office as pointed out by Prof. Machem. See also the language of Justice Cooley in:

Throop v. Langdon, 40 Mich. 673, 682.

The amendment to Section 38 submitted by you reads as follows:

"Salaries of the examiners shall be the sum of seventeen hundred dollars per annum during the first year of their employment as such, and shall be increased one hundred dollars each year of such employment until the full sum of two thousand dollars is reached, which sum shall be their annual salary thereafter."

A bank examiner being a public officer as we have heretofore shown, the constitutional provision above quoted would apply. The language of the constitution is plain that the salaries "shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment." There are cases holding, as in the case of bank examiners, where the tenure of the office is at the pleasure of the appointing power

that a constitutional provision, that the compensation shall not be increased or diminished *during the term for which the officer is elected or appointed,* does not apply to officers who have no fixed term.

29 Cyc. 1429,
Gibbs v. Morgan, 39 N. J. Eq. 126,
Somers v. State, 5 S. D. 321,
58 N. W. 804,
id. 5 S. D. 584,
59 N. W. 962.

But an examination of these cases shows that the decisions turn upon the proposition that the constitutional provision could not apply to an officer who had no fixed term. The language of our constitutional provision makes no reference to the term, but prohibits the increase or the decrease of the salary after election or appointment.

I am therefore of the opinion that the amendment to Section 38 of the Banking Law, made by Senate Enrolled Act 42, is void in so far as it provides for an increase of the salaries of bank examiners now in the employ of the department, or who may be in its employ when the amendment takes effect.

In this connection I call your attention to the fact that the provisions of the statute cannot be evaded by an examiner resigning before the taking effect of the amendment and accepting an appointment after the amendment is in force.

See:

29 Cyc. 1428,
Green v. Hudson Co., 44 N. J. L. 388.

Very respectfully yours,
JNO. E. BIRD,
Attorney General.

LIQUOR LAW. Under Act 291 Public Acts 1909, a corporation cannot secure a license to conduct a retail liquor business, but may conduct a wholesale business. A retail liquor dealer may sell liquors by the drink and in quantities of less than three gallons at any one time. A wholesale dealer may sell liquor in any quantity, but not to be drunk on the premises.

A license cannot be granted to a partnership unless all partners are citizens of the United States and this State.

June 30, 1909.

Mr. Joseph F. Cuddy, City Attorney, Menominee, Michigan:

Dear Sir—Your letter of the 5th instant requesting an opinion as to the construction of certain provisions of House Enrolled Act No. 125, (P. A. 291) known as the Warner-Crampton liquor bill, duly received.

You ask:

First, Whether or not a corporation organized under the laws of this state may take out a license to conduct (a) a retail liquor business; (b) a wholesale liquor business;

Second, Whether a wholesale dealer may not sell in quantities of less

than three gallons, and in fact in any quantity and in any package so long as the liquor is not sold to be drunk on the premises;

Third, Whether or not a license to engage in business as a wholesale dealer may be issued to a partnership consisting of three persons, all of whom are citizens of the United States, but only one of whom is a citizen of Michigan, the other two being citizens of Wisconsin.

For answer to the first question I would say that Section 1 of the act prescribes the license fee to be paid by those engaged in the business of selling any liquors named therein at wholesale or retail. Section 4 requires every person intending to engage in any business named in Section 1 to make and file with the clerk of the township, village or city in which it is proposed to carry on the business, an application for a license, stating in said application among other things whether or not such person is a citizen of the United States and of the State of Michigan. Section 36 provides that no license shall be issued to any one to engage in the *retail* liquor business in this state who is not a citizen of the United States and of the State of Michigan. Section 1 of the act further contains a proviso applicable to all except local option counties, which permits:

"Any person or corporation organized under the laws of this or any other state of the United States, engaged wholly or chiefly in the business of selling at wholesale any of the liquors mentioned in this section." to establish and maintain warehouses in any township, village or city for the storage and sale at wholesale of brewed or malt liquors upon the payment of a license fee of fifty dollars for each warehouse established.

Construing the several provisions of the act together, I am of opinion that a license cannot be granted to a corporation to engage in the business of selling liquor at retail, but that a license may be granted to a corporation to engage in the sale of liquor at wholesale.

For answer to the second question I would say that Section 2 of the act defines retail dealers to include:

"all persons who sell any of such liquors by the drink and in quantities of less than three gallons at any one time to any person or persons." and wholesale dealers to include:

"All persons who sell or offer for sale such liquors and beverages at wholesale in original trade packages and in bulk and by measure not to be drunk on the premises."

Under the provisions of this section a retail liquor dealer may sell liquor in quantities of less than three gallons and may also sell liquors by the drink. Wholesale dealers may under the provisions of this section, sell liquor in any quantity, but may not sell the same to be drunk on the premises.

For answer to the third question I would say that a license cannot be granted to engage in the business of selling liquors either at wholesale or retail to a partnership consisting of three persons, all of whom are citizens of the United States, but only one of whom is a citizen of the State of Michigan. In other words, a license cannot be granted to partnership to engage in the business of selling liquors unless all of the partners are citizens of the United States and of this state.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

PROBATION LAW—COUNTY AGENT. County agent not entitled to one dollar per month for acting as first friend of persons placed on probation by Circuit and Probate Judges, under act 250 P. A. 1907.

June 30, 1909.

Mr. Jesse E. Stone, St. Johns, Michigan:

Dear Sir—I am in receipt of your communication of the 22d instant referring us to Section 2 of Act 250 of the Public Acts of 1907, and in regard to which you inquire if the agent is to receive one dollar per month for probationers placed in his charge by the Circuit and Probate Judge.

In reply thereto would say that Section 1 provides that the county agent of the State Board of Corrections and Charities in each county, when requested by the Governor or the Advisory Board in the matter of Pardons, shall act as the first friend and advisor for non-resident paroled prisoners while on parole from any of the prisons of this state.

Section 2 provides:

"Said county agent, when acting as first friend and advisor for any prisoner on parole, shall receive the sum of one dollar each month for each paroled prisoner, while under his care, to be paid from the same fund and in the same manner as his compensation for other services is now paid."

When the county agent, upon the request of the Governor or the Advisory Board in the matter of Pardons, acts as the first friend and advisor for those prisoners designated in Section 1, he receives, under the provisions of Section 2, one dollar for each paroled prisoner under his care.

Yours respectfully,
JNO. E. BIRD,
Attorney General.

STATE BOARD OF OSTEOPATHIC REGISTRATION AND EXAMINATION. Board may, but is not required, to accept applicant under five year clause, who is graduate of a course of less than three years of nine months each. Applicant located in state prior to January, 1904, and since that time, may claim benefit of five year clause.

June 30, 1909.

Edythe F. Ashmore, D. O., Secretary, State Board of Registration in Osteopathy, 213 Woodward Avenue, Detroit, Michigan:

Dear Madam—We are in receipt of your two letters of the 22nd inst. submitting further inquiries relative to the interpretation of the osteopathic law. In reply thereto will say that Sub. second of Section 2 requires the applicant to furnish:

"evidence that such applicant shall have, previous to the beginning of

his course in osteopathy, a diploma from a high school, acadamy, college or university, approved by aforesaid board."

Under this provision it is for the Board to determine whether they will approve high schools and academies or other preliminary schools having a course of less than four years. This should be done by a by-law or rule adopted by the Board so as to make the requirement uniform for all applicants.

Sub. third of Section 2 requires the applicant to state:

"The date of his diploma, and evidence that such diploma was granted on personal attendance and completion of a course of study of not less than three years of nine months each, and such other information as the board may require."

Sub. fourth requires:

"The name of the school or college of osteopathy from which he was graduated, and which shall have been in good repute as such at the time of the issuing of his diploma, as determined by the board. The board may, in its discretion, accept as the equivalent of any part of all of the second and third requirements, evidence of five or more years' reputable practice of osteopathy, by an osteopathic practitioner located in the state at the time of the passage of this act."

It would seem from the language above that the Board, in its discretion, might accept an applicant who was a graduate of a course of less than three years of nine months each from a reputable osteopathic college, under the five year clause only, but the Board could not be required to accept less than the three years requirement.

In the case mentioned in your second letter, of the osteopath who located in Benton Harbor in January, 1904, who has now practiced five years in Michigan, has the preliminary requirements, spent two years in college; would say that she is not in a position to claim the benefit of the five year clause; first, because she was not located in Michigan in September, 1903; and second, because if she has practiced in Michigan since 1904, she could not be said to have been engaged in the "reputable practice of osteopathy;" for certainly no court would hold that the practice of osteopathy in violation of the plain requirements of the statute relative to registration is a reputable practice.

The statute, as you state, is somewhat ambiguous. It is our view, however, that subdivision third of Section 2 refers to attendance at an osteopathic college, and not to attendance at high school. An osteopathic college to come within the requirements of the statute must have "a course of study of not less than three years of nine months each," and must in addition be determined to be a reputable college by the Board.

In regard to your comment upon our conclusion in our opinion of the 21st inst. relative to admission under the five year clause, will say that it is difficult to see how applicants can at this time bring themselves under this clause. If they were located in the state and had a diploma from "a college of osteopathy . . . in good repute," at the time this act took effect, they were entitled to registration without examination. If, as we have suggested, they have been practicing without being registered since the passage of the act, their practice is not reputable and they are not entitled to registration at this time, upon examination, by virtue of the five year clause.

with reference to license, etc., have to the sale of liquors by druggists under the local option law. Whether or not the druggist has obtained a license from the federal government, if he keeps such liquors for sale and sells them for the purposes permitted by statute, he must, of course, comply with the provisions of the local option law.

Respectfully yours,
JNO. E. BIRD,
Attorney General.

FISHING WITH BOATS, ETC.—LICENSE. A. Booth & Company should pay a license fee for the boats used by it in commercial fishing in the waters of this state, as a foreign corporation, fifty-one per cent of its stock being owned by non-residents of Michigan.

June 30, 1909.

Hon. Horace M. Oren, Attorney at Law, Sault Ste. Marie, Michigan:

Dear Sir—I have had under consideration your communication under date of May 4th, relative to the payment of certain license fees for boats used in commercial fishing by A. Booth & Company, a foreign corporation, or by its ancillary receivers appointed under authority of the United States Circuit Court for the Western District of Michigan.

The act under which this license fee is demanded is Act 153 of the Public Acts of 1907, which provides for the payment of a greater license fee by non-residents of the state than is imposed upon residents of the State of Michigan, under Section 3, which contains the following proviso:

"Provided further, that for the purposes of this act any firm, company, co-partnership, partnership, association or corporation in which less than fifty-one per cent of their stock is actually owned by residents of this State, shall be considered non-residents."

At the outset, I desire to say that a foreign corporation filing its articles in the office of the secretary of state and complying with the provisions of law with respect to foreign corporations for the purpose of carrying on business in this state does not become, as a matter of law, a domestic corporation. I think the correct rule may be stated as follows: A foreign corporation cannot do business in any other state than that of its domicile except through the comity existing among the states, which comity may be modified or withdrawn by the Legislature by proper enactment.

The fish in the waters of the state belong to the people of the state, and the Legislature has full power to regulate the manner of taking such fish, or to absolutely prohibit the taking of such fish, either by residents or non-residents of the state of Michigan. The Legislature may also prescribe the conditions under which such fish may be taken, and by uniform system of legislation has imposed for many years greater restrictions upon non-residents of the state than have been imposed upon residents. The Legislature has full power to restrict the taking of fish to residents of the state alone.

It will be noticed that Act 153 of the Public Acts of 1907 applies to a corporation organized under the laws of the state of Michigan with respect to the payment of the larger license fee if fifty-one per cent of the stock is owned by non-residents. A corporation so organized under the laws of this state would be a domestic corporation for all purposes for which it was incorporated except the taking of fish in the manner set forth in the act.

Hastings v. Annacortes Packing Co., 69 Pac. 776, 29 Wash. 224.

I am unable to see wherein any provision of the federal or state constitutions are violated by the provisions of said act 153 of the Public Acts of 1907, for the reason that the license fee imposed applies uniformly to all persons or corporations of a class. The only objection which might be urged to the classification made in the statute is that it is unreasonable. I do not think that this contention would be tenable, for the reason that the fish in the waters of the state belong to the people of the state, and the classification designated is made for the express purpose of protecting the fish in the waters of the state for the benefit of its residents.

I have reached the conclusions indicated and at this time do not undertake to cite you a full line of authorities bearing upon the several points involved. I am obliged to say that in my opinion A. Booth & Company should pay a license fee for the boats used by it in commercial fishing in the waters of this state as a foreign corporation, fifty-one per cent of its stock being owned by non-residents of this state.

Respectfully yours,

JNO. E. BIRD,

Attorney General.

SCHEDULE "M."

Abstract of the semi-annual reports of the Prosecuting Attorneys of official business of the various counties for the fiscal year ending June 30, 1909.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Abandonment or desertion	302	63	152	18	18	30	21
Abduction of child	2	.....	.....	.....	2	.....	.....
Abortion	2	.....	.....	.....	2	.....	.....
administering drugs with intent to produce	2	.....	2	.....	.....	.....	.....
Adultery	92	27	15	4	19	18	9
Animals, cruelty to	149	106	20	2	11	8	2
malicious killing of	2	1	.....	.....	1	.....	.....
bull running at large	1	.....	.....	.....	1	.....	.....
horse abandoning	1	.....	.....	.....	.....	.....	1
horse, injuring maliciously	3	3	.....	.....	.....	.....	.....
horse, overdriving	8	6	.....	.....	.....	1	1
unlawfully unhitching and driving away	16	13	1	.....	.....	.....	2
Arson	14	3	2	.....	5	4	.....
attempting to commit	2	.....	2	.....	.....	.....	.....
Assault and battery	3,062	1,977	646	183	165	64	27
Assault and robbery	1	1	.....	.....	.....	.....	.....
Assault, felonious	102	36	19	2	13	31	1
simple	56	36	5	1	10	4	.....
with intent to commit indecent and improper liberties	1	1	.....	.....	.....	.....	.....
Assault with intent to commit murder or rape—see under Murder or Rape.							
Automobile law, violation of	68	60	.....	1	1	.....	.....
not exposing number	8	3	5	.....	.....	.....	.....
fast driving	33	29	4	.....	.....	.....	.....
Banking law, violations, unclassified	1	1	.....	.....	.....	.....	.....
Barbers' law, violation of:							
doing business without a license	2	2	.....	.....	.....	.....	.....
unclassified	5	3	2	.....	.....	.....	.....
Bastardy	182	44	22	9	25	24	58
Bigamy	5	4	.....	.....	1	.....	.....
Billboard law, violation of	2	2	.....	.....	.....	.....	.....
Blasphemy	3	3	.....	.....	.....	.....	.....
Boats, fastenings, breaking and removing	4	4	.....	.....	.....	.....	.....
Bottles, registration law, violations of	4	2	2	.....	.....	.....	.....
Breaking and entering	11	7	1	.....	3	.....	.....
buildings, stores, factories, etc., (other than dwelling) in day time	16	14	.....	.....	1	1	.....
buildings, stores, factories, etc., other than dwelling, in night time	59	45	8	.....	3	3	.....
dwelling house in day time	27	25	.....	.....	2	.....	.....
dwelling house in night time	14	11	3	.....	.....	.....	.....
saloon in night time	2	2	.....	.....	.....	.....	.....
Bribery, attempted	2	.....	.....	.....	1	1	.....
Burglary	147	103	11	.....	10	32	1
accessory after the fact, carrying burglarious tools	1	1	.....	.....	.....	.....	.....
attempt to commit	4	4	.....	.....	.....	.....	.....
in a barn	1	.....	.....	.....	.....	1	.....
in a store	10	8	.....	.....	.....	2	.....
Burglary and larceny	37	29	2	1	2	3	.....
from dwelling house	3	2	.....	.....	.....	1	.....
Chastity, imputing want of, to female	6	5	.....	.....	1	.....	.....
Children, abandonment of	8	3	.....	.....	1	4	.....
cruelty to	2	1	.....	.....	.....	.....	1
neglect of	6	3	.....	1	1	.....	1
violation of child labor law	4	2	2	.....	.....	.....	.....
contributing to delinquency of	3	1	.....	.....	2	.....	.....

SCHEDULE "M."—Continued.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Cohabitation, unlawful	10	8				2	
lewd and lascivious	44	23		8	7	3	3
Concealed weapons, carrying of	187	154	16	8	10	3	
Contempt of court	8	7	1				
Copartnership law, violation of	1		1				
Creditors, intent to defraud	1				1		
Crime, imputing to another	2	1					1
soliciting to commit	1	1					
attempting to commit	1	1					
Disorderliness, classified as:							
begging	238	215	23				
drunkenness	8,977	8,685	111	83	50	22	26
drunkard and tippler	187	174	1	6	6		
second offense	87	87					
third offense	16	15				1	
non-support and leaving state	1					1	
non-support of family	386	193	102	26	32	11	22
fortune telling	7	5	2				
prostitution, see "Prostitution"							
vagrancy	1,909	1,799	74		21	13	2
unclassified	2,221	1,908	248	36	14	11	4
frequenting disreputable places	1	1					
Disorderliness, juvenile, classified as:							
burglary	7	7					
truancy	31	25		1		1	4
unclassified	25	24				1	
Dynamite, unlawful use of	1	1					
Election law, violation of:							
illegal voting	2				1	1	
unclassified	2		2				
Embezzlement	97	37	32	11	4	9	
including larceny by conversion	27	8	15		1	3	
of leased property	2			1		1	
Entering without breaking in day time, garden or orchard, and carrying away fruit or vegetables	1	1					
unclassified	2	2					
Entering without breaking and trespassing school building unlawfully	1	1					
Entering without breaking building in night time	1	1					
Entering without breaking, dwelling in day time	1	1					
Enticing female under 16 years of age from home for marriage	4	2	1			1	
Escape, aiding prisoner	1					1	
Escape from prison	1	1					
unclassified	2				1		1
Exposure of person, see "Indecency"							
Extortion, attempted	1	1					
Forged paper, uttering of	28	21	6		1		
False weights and measures, using	3	2	1				
False pretenses, classified as:							
obtaining goods by	16	8	3	1	2	1	1
obtaining money by	81	46	19	7	5	2	2
unclassified	72	37	10	8	3	10	4
Fast driving	5	5					
Felony, compounding	3	1	1		1		
Fighting	1	1					
Fire setting	3	2				1	
setting fire carelessly	3	3					
forest	8	3	2		2	1	
Fire arms, aiming, careless use of, etc	15	10	1	3		1	
Fire, refusing to have extinguished	2	1		1			
Forgery	48	36	2	1	3	6	
Fraud	3	2					1

SCHEDULE "M."—Continued.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Fraud.—*Continued:*							
attempted	1	1					
in public office	1		1				
Fugitive from justice	2						2
assisting	1				1		
Game, and fish law, violation of	13	12		1			
song birds, having unlawful possession of	2	2					
deer hunting and killing with dogs	6	6					
deer, killing out of season	9	5			4		
deer, killing without license	2	1	1				
illegal shipping of deer	2				2		
deer skins, having possession unlawfully	1	1					
fish, killing with fire arms	2	2					
brook trout less than 8 inches	8	6	1	1			
spearing	13	13					
unlawfully having fish in possession under size	15	13			2		
fish illegally	81	60	7	4	7	3	
setting nets	5	5					
selling illegal fish	8	6			1	1	
fishing with dynamite	9	7	2				
trapping muskrats	1	1					
killing muskrats out of season	3	3					
partridge, killing out of season	1	1					
duck killing out of season	2	2					
rabbits, killing by use of ferret	5	5					
venison, having in possession	4	4					
trapping skunks	1			1			
unclassified	313	274	21	3	5	7	3
Gaming	68	65		2	1		
keeping a gaming room, devices, etc	42	33	2			4	3
keeping slot machine, etc	13	9	4				
Gasoline law, violations, red can	2	2					
Hawkers and peddlers law, violation of, classified:							
peddling without license	8	6		2			
unclassified	5	5					
Health law, violations of, classified as:							
carcass of animal, leaving unburied	4	4					
stream of water, polluting	2				1	1	
unclassified	2			1		1	
Highway, obstruction of	3	2		1			
Hotels, boarding houses, etc., law for protection of keepers of, violations classified as:							
defrauding hotel keeper, etc	279	199	10	44	4	6	16
intent to defraud hotel keeper	9	3	5			1	
unclassified	39	22	1	6	2	8	
Incest	6	6					
Indecency:							
exposure of person	21	12	2		5	2	
language in presence of women and children	374	292	30	21	16	5	10
liberties	3	1	1			1	
liberties with female child	26	14	3		4	4	1
pictures, exposing of	1	1					
gross	2	1	1				
Injuries to property, buildings, growing crops, vines, etc.	7	5			1		1
Insulting language, using	3	3					
Interfering with witnesses	1			1			
Jail breaking	3	3					
conveying tools into and assisting	1					1	
Kidnapping	2	1	1				

SCHEDULE "M."—Continued.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Labor law, violations of:							
factory law violation	3	1	1	.....	.....	.....	1
employing child under 16 years of age	4	2	2	.....	.....	.....	.....
not providing seats for females in stores	2	1	1	.....	.....	.....	.....
Larceny, classified as:							
attempted	9	7	1	.....	1	.....	.....
from store in night time	2	1	.....	.....	1	.....	.....
from store, office, etc., in day time	36	30	4	.....	1	1	.....
from building, railroad car, etc	6	6	.....	.....	.....	.....	.....
from dwelling	31	22	.....	.....	6	3	.....
from dwelling in day time	13	10	2	.....	.....	1	.....
from person	64	36	10	.....	4	14	.....
from person, attempt to commit	2	1	.....	.....	.....	1	.....
in dwelling in day time	9	9	.....	.....	.....	.....	.....
of gas	1	1	.....	.....	.....	.....	.....
of personal property	24	20	2	.....	2	.....	.....
of a horse	15	12	1	.....	2	.....	.....
by conversion	23	5	16	2	.....	.....	.....
simple	1,843	1,346	643	36	54	36	7
grand	150	86	33	1	14	16	.....
compound	9	8	1	.....	.....	.....	.....
unclassified	782	529	41	36	79	60	27
Libel, criminal	4	3	.....	1	.....	.....	.....
License, conducting closing out sale without	1	1	.....	.....	.....	.....	.....
Liquor law, violations of, classified as:							
keeping a saloon open after hours	81	64	10	.....	2	5	.....
on election day	6	6	.....	.....	.....	.....	.....
on legal holiday	7	7	.....	.....	.....	.....	.....
on Sunday	103	70	12	1	3	6	1
not filing bonds	18	2	10	.....	6	.....	.....
obstructing view of bar	14	9	2	.....	.....	3	.....
furnishing liquor to intoxicated person	4	1	.....	2	.....	1	.....
furnishing liquor to a drunkard	9	7	1	.....	.....	1	.....
selling liquor without having paid license	110	45	39	4	15	5	2
selling liquor without having paid tax	11	9	.....	1	1	.....	.....
druggist selling liquor as beverage	3	2	.....	.....	.....	1	.....
selling liquor to old soldiers	2	.....	1	.....	1	.....	.....
selling liquor to Indians	1	1	.....	.....	.....	.....	.....
selling liquor to prisoner	5	4	.....	.....	.....	1	.....
unclassified	435	296	25	17	59	33	5
maintaining saloon within one mile of Soldiers' Home	6	.....	3	.....	3	.....	.....
Livery keepers' law, violation of	9	3	.....	3	.....	3	.....
defrauding livery keeper	41	33	.....	7	.....	.....	1
Local option law, violation of	113	86	7	1	8	11	.....
Manslaughter	17	8	6	.....	3	.....	.....
Mayhem	2	.....	.....	1	1	.....	.....
Medical law, violation:							
practicing medicine without certificate or license	5	3	2	.....	.....	.....	.....
distributing free medicine from house to house	1	1	.....	.....	.....	.....	.....
Milk adulteration, see under "Pure Food Law."							
Minors:							
billiard or pool rooms, allowing to remain in	20	10	10	.....	.....	.....	.....
liquor, furnishing to	4	2	1	.....	.....	1	.....
liquor, selling to	41	28	4	2	4	2	1
tobacco cigarettes, etc	21	20	.....	.....	.....	.....	1
purchasing junk from	7	6	.....	.....	1	.....	.....
explosives, selling to	1	.....	.....	.....	.....	1	.....
Misdemeanor	11	10	1	.....	.....	.....	.....
Motor vehicle law, violations of	200	189	6	2	3	.....	.....

SCHEDULE "M."—Continued.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc
Murder, classified as follows:							
assault with intent to	27	23	6	.....	3	4	1
attempt to	3	.....	2	.....	.....	1	.....
first degree	7	5	2	.....	.....	.....	.....
threats to	1	.....	.....	.....	.....	.....	1
unclassified	36	24	8	.....	3	.....	1
Nuisance, maintaining	3	1	2	.....	.....	.....	.....
committing	3	2	.....	.....	1	.....	.....
common	2	1	1	.....	.....	.....	.....
Officers, offenses against:							
impersonating	1	.....	.....	.....	.....	1	.....
resisting	23	12	3	3	4	1	.....
Ordinances, city, violation of	30	16	11	.....	.....	1	2
fast driving	3	3	.....	.....	.....	.....	.....
obstruction of street crossing and alley	7	3	.....	4	.....	.....	.....
Parole, violation of	1	.....	1	.....	.....	.....	.....
Peace, breach of	23	22	.....	.....	.....	1	.....
exciting disturbance	1,053	804	244	1	2	.....	2
surety to keep	40	26	4	1	3	4	2
affray	4	1	.....	.....	.....	3	.....
Peddling without a license, see "Hawkers and Peddlers Law"							
Perjury	16	7	1	1	6	1	.....
subornation of	1	.....	1	.....	.....	.....	.....
Petroleum, etc., transportation of by pipe line, violation Act 29, 1889	1	1	.....	.....	.....	.....	.....
Pharmacy law, violation	23	17	5	.....	1	.....	.....
Plumbing law, violation	4	3	1	.....	.....	.....	.....
Poison:							
mingling with food with intent to kill	2	1	.....	.....	.....	1	.....
placing on streets	1	1	.....	.....	.....	.....	.....
poisoning, attempted, animals	1	1	.....	.....	.....	.....	.....
Polygamy	4	3	.....	.....	1	.....	.....
Profanity	11	9	.....	.....	1	1	.....
Property, offenses against, classified as:							
destroying	2	1	.....	.....	.....	.....	1
destroying maliciously	108	75	8	15	5	.....	5
injuring maliciously	135	54	57	10	6	7	1
Property, chatte mortgaged, concealing	2	.....	1	1	.....	.....	.....
disposing of	24	6	3	2	5	1	7
removing	2	1	.....	1	.....	.....	.....
Property, contract of sale, violation of	2	.....	.....	.....	.....	.....	2
concealing fraudulently	1	.....	1	.....	.....	.....	.....
disposing of fraudulently	7	3	.....	3	.....	1	.....
removing unlawfully	6	.....	6	.....	.....	.....	.....
Property, leased, disposing of	1	1	.....	.....	.....	.....	.....
Property, personal							
destroying	6	5	1	.....	.....	.....	.....
destroying maliciously	10	5	.....	3	.....	2	.....
injuring maliciously	6	3	3	.....	.....	.....	.....
Property, real, injury to	3	2	.....	1	.....	.....	.....
malicious injury to	13	9	.....	2	1	1	.....
burning building	1	.....	.....	.....	.....	1	.....
setting fire to	1	.....	.....	.....	.....	1	.....
Property, stolen:							
removing	1	.....	.....	1	.....	.....	.....
concealing	9	1	2	.....	.....	6	.....
purchasing	1	.....	.....	1	.....	.....	.....
receiving	87	43	25	5	10	2	2

SCHEDULE "M."—Continued.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Prostitution:							
common	271	211	51	6	3	.....	.....
keeping house of ill-fame, bawdy house, etc	52	37	.....	3	8	4	.....
inmate of house of	1	1	.....	.....	.....	.....	.....
procuring females for prostitution	2	.....	2	.....	.....	.....	.....
Public Asylum, Pontiac, creating disturbance in	1	1	.....	.....	.....	.....	.....
Public meeting, disturbing	9	8	.....	1	.....	.....	.....
Public school, disturbing	3	3	.....	.....	.....	.....	.....
Pure food law, violations of, classified as:							
illegally exposing for sale amd selling oleomargarine	1	1	.....	.....	.....	.....	.....
selling adulterated foods	1	1	.....	.....	.....	.....	.....
milk adulterating	20	19	1	.....	.....	.....	.....
unclassified	8	7	1	.....	.....	.....	.....
Quarantine law, violation of	5	3	1	.....	1	.....	.....
Railroad law, violation of	1	1	.....	.....	.....	.....	.....
boarding a moving train	43	39	.....	.....	1	3	.....
entering freight car to obtain carriage	44	43	1	.....	.....	.....	.....
breaking and entering freight car	41	27	4	1	9	.....	.....
removing switch lights	2	2	.....	.....	.....	.....	.....
attempt to wreck train, placing obstruction on track, etc	5	1	.....	.....	3	1	.....
trains, jumping on, stealing ride on, etc	37	34	2	.....	.....	1	.....
trains, exciting disturbance on, etc	9	9	.....	.....	.....	.....	.....
trains, throwing missiles at	1	1	.....	.....	.....	.....	.....
endangering lives of persons engaged in work of railroad company	2	2	.....	.....	.....	.....	.....
Rape	109	75	10	1	10	13	.....
assault with intent to commit	40	25	4	1	4	6	.....
carnal knowledge of female under 16 years of age	6	4	2	.....	.....	.....	.....
Registered bottles, see "Bottles"							
Religious meeting, disturbing	14	5	6	2	1	.....	.....
Robbery, classified as:							
from person	10	4	5	.....	.....	1	.....
highway robbery	9	5	1	.....	.....	3	.....
armed	4	3	.....	.....	1	.....	.....
unarmed	6	5	1	.....	.....	.....	.....
assault with intent to rob	10	2	1	.....	6	1	.....
unclassified	21	7	1	1	1	11	.....
School law, violation of, classified as:							
not sending children to school	99	70	4	6	7	10	2
unclassified	92	60	4	2	21	5	.....
Search warrant	19	5	3	2	2	1	6
Seduction	11	1	3	1	2	2	2
Slander, criminal	157	84	46	14	4	3	6
Suicide, attempt at	1	1	.....	.....	.....	.....	.....
Sunday law, violation of, classified as:							
playing base ball on	11	.....	9	.....	.....	2	.....
keeping places of business open on, selling goods	4	2	2	.....	.....	.....	.....
hunting on Sunday	7	5	.....	.....	2	.....	.....
unclassified	15	5	1	.....	.....	.....	9
Tax law, violation of, classified as:							
refusing and neglecting to make statement regarding taxable property	1	.....	.....	.....	.....	1	.....
Telephone lines, obstructing	1	1	.....	.....	.....	.....	.....
Threats, malicious, to do bodily harm, extort money, etc.	86	33	28	4	10	5	6
Timber, malicious cutting	1	.....	.....	.....	.....	1	.....
Tobacco law, violation of	1	1	.....	.....	.....	.....	.....
Traction engine not equipped with spark arrester	1	1	.....	.....	.....	.....	.....
unclassified violations traction engine law	1	1	.....	.....	.....	.....	.....

SCHEDULE "M."—Concluded.

Offense charged.	Prosecuted.	Convicted.	Acquitted.	Dismissed on payment of costs.	Nolle prossed.	Discharged on examination.	Escapes, etc.
Trespass, classified as:							
on State lands	5	4	1	.....	.....	.....	.....
cutting and removing timber	2	1	.....	1	.....	.....	.....
hunting on land without permission	3	3	.....	.....	.....	.....	.....
wilful	14	8	2	1	.....	2	.1
cutting shade trees	2	2	.....	.....	.....	.....	.....
unclassified	16	10	3	1	1	1	.....
Veterinary law, violation of	5	4	.....	1	.....	.....	.....
Totals	28,170	22,531	2,911	725	959	697	347

SCHEDULE "N."

Recapitulation of the semi-annual reports of the Prosecuting Attorneys for the fiscal year ending June 30, 1909.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number nolle prossed.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Alcona	4	14	18	2	7	9	.....	5	5	.....	.....	.....	.....	.....	.....	1	2	3	1	.....	1
Alger	30	26	56	27	21	48	.....	2	2	.....	1	1	2	2	4	.....	.....	.....	1	.....	1
Allegan	168	125	293	148	111	259	5	3	8	.....	.....	.....	5	11	16	.....	.....	.....	10	.....	10
Alpena	64	56	120	39	39	78	12	7	19	.....	5	5	.....	.....	.....	12	5	17	1	.....	1
Antrim	41	39	80	38	37	75	1	2	3	2	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	.....
Arenac	14	16	30	12	16	28	.....	.....	.....	.....	.....	.....	2	.....	2	.....	.....	.....	.....	.....	.....
Baraga	65	45	110	60	39	99	1	2	3	.....	.....	.....	4	2	6	.....	2	2	.....	.....	.....
Barry	136	182	318	111	162	273	1	2	3	8	2	10	.....	15	15	15	1	16	1	.....	1
Bay	600	494	1,094	461	400	861	96	56	152	9	23	32	2	1	3	27	14	41	5	.....	5
Benzie	68	32	100	59	27	86	3	1	4	3	3	6	1	1	2	2	.....	2	.....	.....	.....
Berrien	410	281	691	310	201	511	10	3	13	9	14	23	4	1	5	70	21	91	7	41	48
Branch	71	48	119	57	45	102	3	1	4	2	.....	2	3	.....	3	6	2	8	.....	.....	.....
Calhoun	292	291	583	210	231	441	13	9	22	18	10	28	5	40	45	39	1	40	7	.....	7
Cass	185	176	361	166	156	322	3	5	8	2	1	3	.....	.....	.....	14	13	27	.....	1	1
Charlevoix	38	11	49	16	11	27	7	.....	7	2	.....	2	1	.....	1	4	.....	4	8	.....	8
Cheboygan	58	84	142	36	64	100	5	11	16	3	3	6	10	1	11	2	2	4	2	3	5
Chippewa	92	89	181	59	61	120	5	3	8	7	1	8	10	12	22	8	4	12	3	8	11
Clare	30	18	48	26	18	44	1	.....	1	2	.....	2	.....	.....	.....	1	.....	1	.....	.....	.....
Clinton	92	31	123	88	31	119	.....	.....	.....	.....	.....	.....	1	.....	1	1	.....	1	2	.....	2
Crawford	42	40	82	36	34	70	6	3	9	.....	.....	.....	.....	.....	.....	.....	1	1	.....	2	2
Delta	100	71	171	62	59	121	10	2	12	14	.....	14	9	10	19	5	.....	5	.....	.....	.....
Dickinson	131	232	363	94	197	291	.....	4	4	2	9	11	35	1	36	.....	21	21	.....	.....	.....
Eaton	315	408	723	264	387	651	2	4	6	4	5	9	37	10	47	.....	1	1	8	1	9
Emmet	53	61	114	48	57	105	1	3	4	.....	.....	.....	1	1	2	.....	.....	.....	3	.....	3
Genesee	249	238	487	185	191	376	1	3	4	4	9	13	.....	6	6	59	28	87	.....	1	1
Gladwin	13	11	24	7	7	14	4	.....	4	2	.....	2	.....	2	2	.....	.....	.....	.....	2	2
Gogebic	378	307	685	340	282	622	1	5	6	18	3	21	19	16	35	.....	.....	.....	.....	1	1
Grand Traverse	46	52	98	37	42	79	2	2	4	.....	2	2	3	6	9	.....	.....	.....	4	.....	4
Gratiot	128	58	186	83	43	126	4	3	7	10	5	15	7	4	11	22	3	25	2	.....	2
Hillsdale	81	130	211	64	121	185	1	1	2	6	4	10	5	2	7	4	1	5	1	1	2

SCHEDULE "N."—Concluded.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number nolle prossed.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Houghton	547	334	881	423	242	665	15	14	29	44	33	77	5	3	8	2	5	7	58	37	95
Huron	35	38	73	25	28	53	1	1	2	6	.....	6	3	1	4	.....	5	5	.....	3	3
Ingham	378	425	803	337	385	722	5	7	12	.....	.....	.....	33	31	64	2	2	4	1	.....	1
Ionia	156	124	280	148	117	265	1	1	2	.....	.....	.....	.....	.....	.....	1	3	4	6	3	9
Iosco	38	24	62	31	18	49	2	2	4	1	.....	1	.....	.....	.....	3	4	7	1	.....	1
Iron	90	191	281	87	188	275	1	.....	1	.....	.....	.....	2	1	3	.....	1	1	.....	1	1
Isabella	80	61	141	69	50	119	3	.....	3	.....	1	1	7	9	16	1	.....	1	.....	1	1
Jackson	380	426	806	311	352	663	7	6	13	10	59	69	37	1	38	6	8	14	9	.....	9
Kalamazoo	95	129	224	87	110	197	1	5	6	.....	1	1	7	12	19	.....	.....	.....	.....	1	1
Kalkaska	9	24	33	8	24	32	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	1
Kent	544	381	925	449	305	754	40	21	61	4	13	17	43	28	71	6	9	15	2	5	7
Keweenaw	28	31	59	22	22	44	2	1	3	.....	2	2	.....	1	1	4	2	6	.....	3	3
Lake	15	4	19	9	4	13	.....	.....	.....	5	.....	5	1	.....	1	.....	.....	.....	.....	.....	.....
Lapeer	76	84	160	66	77	143	.....	3	3	1	.....	1	.....	3	3	2	.....	2	7	1	8
Leelanau	18	8	26	14	5	19	1	1	2	.....	.....	.....	3	2	5	.....	.....	.....	.....	.....	.....
Lenawee	241	193	434	215	176	391	3	3	6	.....	2	2	19	9	28	4	3	7	.....	.....	.....
Livingston	98	120	218	93	114	207	1	3	4	.....	2	2	2	.....	2	1	1	2	1	.....	1
Luce	10	18	28	10	16	26	.....	2	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mackinac	21	14	35	19	8	27	.....	4	4	.....	.....	.....	.....	.....	.....	2	2	4	.....	.....	.....
Macomb	64	81	145	51	68	119	1	1	2	9	9	18	.....	.....	.....	3	3	6	.....	.....	.....
Manistee	228	188	416	201	165	366	2	3	5	9	9	18	16	3	19	.....	.....	.....	.....	8	8
Marquette	276	272	548	263	230	493	5	5	10	2	22	24	6	7	13	.....	7	7	.....	1	1
Mason	82	79	161	59	57	116	7	3	10	.....	3	3	7	8	15	8	3	11	1	5	6
Mecosta	23	31	54	23	28	51	.....	.....	.....	.....	.....	.....	.....	3	3	.....	.....	.....	.....	.....	.....
Menominee	28	18	46	16	13	29	3	1	4	.....	.....	.....	7	4	11	.....	.....	.....	2	.....	2
Midland	26	46	72	18	41	59	.....	.....	.....	2	.....	2	.....	.....	.....	3	1	4	3	4	7
Missaukee	8	23	31	7	17	24	.....	5	5	.....	.....	.....	1	1	2	.....	.....	.....	.....	.....	.....
Monroe	95	95	190	93	86	179	.....	2	2	1	5	6	1	.....	1	.....	2	2	.....	.....	.....
Montcalm	71	69	140	53	48	101	.....	12	12	1	1	2	.....	5	5	15	1	16	2	2	4
Montmorency	8	11	19	4	5	9	.....	2	2	.....	.....	.....	1	3	4	.....	1	1	3	.....	3
Muskegon	48	55	103	35	38	73	.....	3	3	1	1	2	1	4	5	11	9	20	.....	.....	.....
Newaygo	25	30	55	14	19	33	2	2	4	.....	4	4	2	1	3	4	4	8	3	.....	3
Oakland	181	173	354	165	157	322	2	1	3	.....	.....	.....	9	10	19	5	5	10	.....	.....	.....
Oceana	17	16	33	14	12	26	1	.....	1	.....	.....	.....	1	1	2	.....	3	3	1	.....	1
Ogemaw	36	32	68	28	27	55	6	1	7	.....	.....	.....	2	4	6	.....	.....	.....	.....	.....	.....

Ontonagon	3	5	8	2	4	6	.....	1	1	.....	.....	.....	1	.....	1	.....	.....	.....	.....	.....	.....	.....
Osceola	64	32	96	56	21	77	.....	4	4	2	1	3	2	3	5	4	1	5	.....	2	2	
Oscoda	3	3	6	3	3	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Otsego	97	116	213	85	94	179	3	5	8	4	8	12	5	6	11	.....	3	3	.....	.....	.....	.....
Ottawa	169	252	421	165	246	411	1	1	2	1	.....	1	2	5	7	.....	.....	.....	.....	.....	.....	.....
Presque Isle	20	35	55	10	24	34	4	6	10	.....	2	2	.....	1	1	6	2	8	.....	.....	.....	.....
Roscommon	15	17	32	13	14	27	.....	.....	.....	.....	1	1	.....	.....	.....	.....	2	2	2	.....	.....	2
Saginaw	273	289	562	231	206	437	1	7	8	8	25	33	31	36	67	2	15	17	.....	.....	.....	.....
St. Clair	322	208	530	271	162	433	12	5	17	.....	.....	.....	30	40	70	1	1	2	8	.....	.....	8
St. Joseph	117	84	201	88	68	156	1	2	3	16	5	21	3	9	12	6	.....	6	3	.....	.....	3
Sanilac	24	23	47	15	18	33	1	.....	1	2	.....	2	3	3	6	2	2	4	1	.....	.....	1
Schoolcraft	25	44	69	11	39	50	3	1	4	.....	.....	.....	7	3	10	.....	1	1	4	.....	.....	4
Shiawassee	143	148	291	120	119	239	4	.....	4	1	6	7	9	16	25	1	4	5	8	3	,	11
Tuscola	33	40	73	31	39	70	.....	1	1	.....	.....	.....	2	.....	2	.....	.....	.....	.....	.....	.....	.....
Van Buren	222	221	443	180	212	392	1	3	4	.....	1	1	1	4	5	29	1	30	11	11	.....	
Washtenaw	328	445	773	316	362	678	1	2	3	3	63	66	7	5	12	1	11	12	.....	2	2	
Wayne	4,499	4,242	8,711	3,224	3,072	6,296	1,150	1,110	2,260	69	26	95	26	15	41	.....	19	19	.....	.....	.....	.....
Wexford	21	35	56	18	28	46	2	2	4	.....	1	1	1	2	3	.....	2	2	.....	.....	.....	.....
Totals	14,417	13,753	28,170	11,451	11,080	22,531	1,504	1,407	2,911	319	406	725	512	447	959	427	270	697	204	143	347	

SCHEDULE "O."

List of Prosecuting Attorneys, by counties, with the name of the county seat and address of prosecutor.

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Alcona	Harrisville	John A. Stewart	Harrisville.
Alger	Munising	William J. O'Brien	Grand Marais.
Allegan	Allegan	Clare E. Hoffman	Allegan.
Alpena	Alpena	Fred P. Smith	Alpena.
Antrim	Bellaire	Clark E. Densmore	Bellaire.
Arenac	Standish	Benjamin J. Henderson	Standish.
Baraga	L'Anse	Joseph J. O'Connor	L'Anse.
Barry	Hastings	William W. Potter	Hastings.
Bay	Bay City	Charles W. Hitchcock	Bay City, Sta. A.
Benzie	Honor	Marion G. Paul	Honor.
Berrien	St. Joseph	William H. Andrews	Benton Harbor.
Branch	Coldwater	W. Glenn Cowell	Coldwater.
Calhoun	Marshall	Howard W. Cavanagh	Homer.
Cass	Cassopolis	Thomas J. Bresnahan	Dowagiac.
Charlevoix	Charlevoix	Alfred B. Nichols	East Jordan.
Cheboygan	Cheboygan	David H. Crowley	Cheboygan.
Chippewa	Sault Ste. Marie	Merlin Wiley	Sault Ste. Marie.
Clare	Harrison	John Quinn	Harrison.
Clinton	St. Johns	Edward J. Moinet	St. Johns.
Crawford	Grayling	Oscar Palmer	Grayling.
Delta	Escanaba	Henry R. Dotsch	Escanaba.
Dickinson	Iron Mountain	Robert C. Henderson	Norway.
Eaton	Charlotte	Russell R. McPeek	Charlotte.
Emmet	Petoskey	Wade B. Smith	Petoskey.
Genesee	Flint	James S. Parker	Flint.
Gladwin	Gladwin	Thomas G. Campbell	Gladwin.
Gogebic	Bessemer	Charles M. Humphrey	Ironwood.
Grand Traverse	Traverse City	Fred H. Pratt	Traverse City.
Gratiot	Ithaca	John M. Everden	Ithaca.
Hillsdale	Hilledale	Paul W. Chase	Hillsdale.
Houghton	Houghton	William J. McDonald	Calumet.
Huron	Bad Axe	Xenophon A. Boomhower	Bad Axe.
Ingham	Mason	Walter S. Foster	Lansing.
Ionia	Ionia	Dwight C. Sheldon	Ionia.
Iosco	Tawas City	Edwin Rawden	East Tawas.
Iron	Crystal Falls	Charles H. Watson	Crystal Falls.
Isabella	Mt. Pleasant	Roy D. Matthews	Mt. Pleasant.
Jackson	Jackson	Albert O. Reece	Jackson.
Kalamazoo	Kalamazoo	George V. Weimer	Kalamazoo.
Kalkaska	Kalkaska	Ernest C. Smith	Kalkaska.
Kent	Grand Rapids	William B. Brown	Grand Rapids.
Keweenaw	Eagle River	Albert E. Petermann	Calumet.
Lake	Baldwin	Hal. L. Cutler	Luther.
Lapeer	Lapeer	Herbert W. Smith	Lapeer.
Leelanau	Leland	John O. Duncan	Sutton's Bay.
Lenawee	Adrian	Burton L. Hart	Adrian.
Livingston	Howell	William E. Robb	Howell.
Luce	Newberry	Louis H. Fead	Newberry.
Mackinac	St. Ignace	Henry Hoffman	St. Ignace.
Macomb	Mt. Clemens	Warren S. Stone	Mt. Clemens.
Manistee	Manistee	Charles N. Belcher	Manistee.
Marquette	Marquette	Frank A. Bell	Negaunee.
Mason	Ludington	Henry G. Reek	Ludington.
Mecosta	Big Rapids	Joseph Barton	Big Rapids.
Menominee	Menominee	Michael J. Doyle	Menominee.
Midland	Midland	Robert H. Lane	Midland.
Missaukee	Lake City	Norman W. Dunan	Lake City.
Monroe	Monroe	Jesse H. Root	Monroe.
Montcalm	Stanton	Charles B. Rarden	Stanton.
Montmorency	Atlanta	Lewis W. Ostrander	Hillman.

SCHEDULE "O."—Concluded.

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Muskegon	Muskegon	Alexander Sutherland	Muskegon.
Newaygo	Newaygo	John G. Anderson	Fremont.
Oakland	Pontiac	Frank L. Covert	Pontiac.
Oceana	Hart	Rufus F. Skeels	Hart.
Ogemaw	West Branch	Evender M. Harris	West Branch.
Ontonagon	Ontonagon	William R. Adams	Ontonagon.
Osceola	Hersey	Fred Trumbull	Evart.
Oscoda	Mio	Ward B. Connine	Mio.
Otsego	Gaylord	Albert M. Hilton	Gaylord.
Ottawa	Grand Haven	Corie C. Coburn	Grand Haven.
Presque Isle	Rogers	Griffin Covey, Jr.	Rogers.
Roscommon	Roscommon	Henry H. Woodruff	Roscommon.
Saginaw	Saginaw	Clarence M. Browne	Saginaw.
Sanilac	Sandusky	Fred A. Farr	Sandusky.
Schoolcraft	Manistique	James C. Wood	Manistique.
Shiawassee	Corunna	Byron P. Hicks	Durand.
St. Clair	Port Huron	Frederick B. Brown	Port Huron.
St. Joseph	Centerville	Edward H. Andrews	Three Rivers.
Tuscola	Caro	Timothy C. Quinn	Caro.
Van Buren	Paw Paw	Glenn E. Warner	Paw Paw.
Washtenaw	Ann Arbor	Carl Storm	Ann Arbor.
Wayne	Detroit	Philip T. Van Zile	Detroit.
Wexford	Cadillac	William H. Yearnd	Cadillac.

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